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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-32

CURTIS C. FLOOD,

Petitioner,

v.

BOWIE K. KUHN, *et al.*,

Respondents.

BRIEF FOR RESPONDENTS

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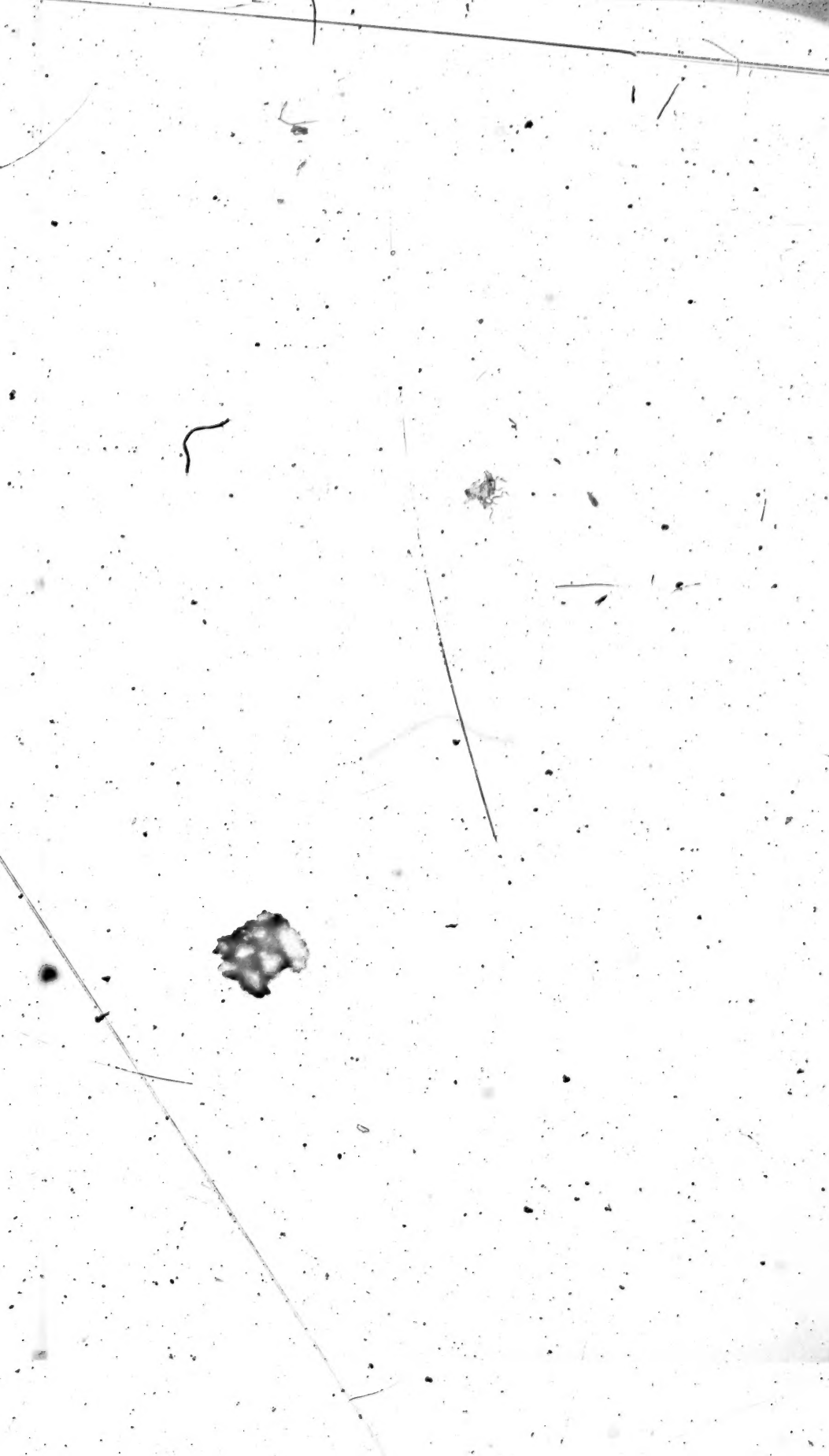
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BRIEF FOR RESPONDENTS

Opinions Below

The opinion of the United States District Court for the Southern District of New York (App. 95-122) is reported at 316 F. Supp. 271. The opinion of the Court of Appeals for the Second Circuit (App. 125-141) is reported at 443 F.2d 264. Interlocutory opinions of the District Court with respect to Petitioner's application for a temporary injunction (App. 54-82) and Respondents' motions to dismiss (App. 83-94) are reported at 309 F. Supp. 793 and 312 F. Supp. 404, respectively.

Questions Presented

1. Should this Court abandon its long, unbroken line of decisions holding that baseball's reserve system is not subject to the federal antitrust laws, when the record in this action and the history of Congressional consideration

of baseball both provide compelling support for continued adherence to such precedents?

2. Does federal labor policy preclude application of the antitrust laws to baseball's reserve system, a mandatory subject of bargaining which has been dealt with in a collective bargaining agreement and has been under thorough and active consideration in negotiations between the major league baseball clubs and the Major League Baseball Players Association?

3. Should the nationwide framework of baseball be made subject to regulation under the antitrust laws of the various states, when such regulation by its inherent lack of uniformity would unduly interfere with baseball's interstate operations and would be inconsistent with the federal policy of continued self-regulation, subject to the will of Congress?

Constitutional and Statutory Provisions Involved

The pertinent provision of the Sherman Act (15 U.S.C. § 1) and excerpts from various state antitrust statutes are set forth in Appendix A to Petitioner's brief. Also involved are Article I, Section 8 and Article VI, Clause 2 of the United States Constitution which are set forth in Addendum A, annexed hereto.

Statement of the Case

This case involves a dispute over professional baseball's reserve system, which is the cornerstone of the game's league structure and competitive stability, and a central element in the employer-employee relationship between clubs and players. The reserve system is embodied in several provisions of baseball's Uniform Player's Contract and

the Major League Rules and includes various safeguards for the players as well as for the clubs.* In essence, the purpose and effect of these provisions are to enhance competition on the field and preserve the integrity of play by promoting continuity in the employment relationship between each of the 24 major league clubs and its 40 "reserved" players.

The Parties and Proceedings Below

This action, financed entirely by the Major League Baseball Players Association, the players' collective bargaining representative (App. 169; R. 112-13, 115), was brought in the name of Curtis Flood, who, until he departed from baseball in April 1971 for reasons unrelated to this case, had been a highly paid major league player.** In October 1969, Mr. Flood's contract was assigned by the St. Louis Cardinals to the Philadelphia Phillies, but he refused to honor the assignment. After some meetings with Players Association leaders, who were then in the midst of negotiations with the clubs regarding the reserve system and other employment matters (App. 167-68; R. 62, 109-10), Mr. Flood asked the Commissioner of Baseball on December 24, 1969, to advise all the major league clubs that he was

* The pertinent provisions are set out in Addendum B to this brief.

** Mr. Flood began his professional baseball career in 1956 under contract with the Cincinnati Reds, at a salary of $4,000. When his contract was assigned to the St. Louis Cardinals in 1958, he was given an opportunity to play regularly and his salary with the Cardinals steadily increased from $7,000 to $90,000 in 1969. Mr. Flood refused to play during the 1970 season at the $100,000 salary offered by the Philadelphia club, despite Respondents' offer that he could play without prejudice to this action. (App. 143, 145; R. 122-23, 372-73). After the 1970 season, the Philadelphia club assigned the right to Mr. Flood's contract to the Washington Senators, with whom Mr. Flood signed a contract to play during the 1971 season for $110,000. By agreement among the parties, this was without prejudice to Petitioner's rights in this action. On April 27, 1971, Mr. Flood left the Washington club for personal reasons and has not played since that date.

free to negotiate with any of them. (Pl. Ex. 4; R. 72.) The Commissioner responded that he could not grant the request because Mr. Flood's contract had been properly assigned in accordance with its provisions and because existing baseball rules prohibited his negotiating with other than the assignee club. (Pl. Ex. 5; R. 73.) Thereafter this action was commenced on January 16, 1970, and Mr. Flood declined the Commissioner's invitation to discuss the matter further. (R. 136-37.)

The defendants named in the complaint are Bowie K. Kuhn, individually and as Commissioner of Baseball,* Charles S. Feeney, individually and as President of the National League, Joseph E. Cronin, individually and as President of the American League, and the twenty-four clubs which then comprised the membership of the two major leagues.

The principal claims in the complaint are that the reserve system violates federal and various state antitrust laws.** Petitioner's brief (pp. 16-17, 45) asserts that the reserve system is a *per se* violation of those laws, and Mr. Flood himself testified at trial that he "would like the whole system to be struck down and declared illegal" (R. 118). All of the other witnesses presented at trial by Petitioner, however, assumed that the continuation of a reserve system was necessary. Their testimony focused on general player grievances regarding the present system and various modi-

* The Commissioner of Baseball is joined as a defendant in only the first alleged cause of action, the federal antitrust claim. Separate counsel for the Commissioner therefore join in those portions of this brief which deal with that claim. The Commissioner has an administrative and quasi-judicial role in baseball that requires him to investigate and take such action as will preserve the integrity of the game and further the interests of players, clubs and fans. Major League Agreement, Art. I (Pl. Ex. 6, pp. 501-02).

** Originally Petitioner claimed, as well, violations of anti-peonage statutes and the Thirteenth Amendment. Those claims, rejected by the District Court, were not asserted on appeal to the Second Circuit and are not asserted here.

fications of the system suggested by the Players Association, most of which had no direct bearing on Mr. Flood or his complaint.

After a three week trial on the merits, the District Court dismissed the complaint. 316 F. Supp. 271 (App. 95-122). The federal antitrust claim was dismissed on the authority of *Toolson v. New York Yankees, Inc.*, 346 U. S. 356 (1953); and the state law claims were rejected because state antitrust regulation would conflict with federal policy and because "uniformity [is required] in any regulation of baseball and its reserve system." 316 F. Supp. at 280 (App. 111). In its opinion the District Court set forth such findings of fact as were appropriate to its determinations.

The Court of Appeals for the Second Circuit unanimously affirmed the District Court's decision. 443 F.2d 264 (App. 125-41).

Factual Background

To evaluate properly the issues here involved it is essential to consider (1) the historical, economic and competitive realities which make the reserve system a necessity and (2) the role of collective bargaining in professional baseball as it relates to the reserve system and to the commencement of the present lawsuit.

(1) The Reserve System and The Historical, Competitive and Economic Realities of Professional Baseball.

As the District Court found, the reserve system, which is "perhaps the cornerstone of the present structure" of baseball, "has been in force for nearly one hundred years, almost the entire history of organized professional baseball." 316 F. Supp. at 273 (App. 98-99). The historical evidence presented at trial concerning the experiences of professional

baseball prior to the adoption of an effective reserve system showed "that chaotic conditions prevailed." (App. 243-48; Pl. Ex. 15-a, p. 229.) In those early days, players freely "revolved" among clubs, balanced competition was impossible to achieve, clubs failed—often in midseason—disrupting league play, and the game found little public acceptance. As a product of that climate, gambling and dishonesty were commonplace and "hippodroming"—which involved the fixing of games—became a practice. Player salaries were low and the failure of clubs often meant that salaries were never paid. The turning point in baseball's history came with the realization that a reserve system assuring player continuity was necessary. (App. 243-48, 253; R. 868.)

The District Court observed that, with the sole exception of Mr. Flood, all Petitioner's witnesses acknowledged that a reserve system "is a necessary element of the organization of baseball as a league sport. . . ." 316 F. Supp. at 275 (App. 101). (*E.g.*, testimony of Jackie Robinson, App. 172; Hank Greenberg, R. 247; and Bill Veeck, App. 384-85.) Respondents' witnesses, the Commissioner of Baseball, the Presidents of the American and National Leagues, club officials, former players, and John Clark, an economist and management consultant from Arthur D. Little, Inc., all testified as to the critical importance of the reserve system to baseball's existence. (*E.g.*, App. 243-48, 280-82, 337-40.)

Accordingly, the District Court found that "the preponderance of credible proof does not favor elimination of the reserve clause." 316 F. Supp. at 276 (App. 103). An analysis of the rationale of the reserve system fully supports this conclusion.

(a) *The Need to Maintain Balanced Competition.*

It is commonly recognized that professional baseball cannot function like the usual commercial enterprise, where each competitor has a strong incentive to strive to attain a greater market share and, if possible, put the others out

of business. On the contrary, the interests of the players and the clubs in baseball require that the strength of the teams in the leagues be reasonably evenly balanced. Thus there is a blend of competition and partnership among the clubs in baseball which would be both unnecessary and improper in the normal business world. (*E.g.*, App. 337-40, 399.)

The record shows that, without the balance provided by the reserve system, the clubs with greater financial resources would attract the most outstanding players. (*E.g.*, App. 280, 337; R. 1280-81.) The early history of the game —before the adoption of a reserve system—provides us with clear evidence of such results. Without the stability afforded by the reserve system, successful and reasonably balanced league play was impossible to maintain. (App. 243-48.)

Today, the forces that would create imbalance are at least as powerful as in those early days. The ability to compete for players varies widely from club to club. In 1969, for example, according to a study prepared by Arthur Andersen & Co.,* 13 of the 24 major league clubs suffered losses, some of them very substantial. The profitability of the other clubs varied widely, with the clubs in the larger cities having a continuing advantage in terms of revenue potential.** Accentuating this disparity in operating revenues, there are also great differences in the financial resources otherwise available to the various clubs. (R. 715-16, 1469-70.)

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* Pl. Ex. 7, the Arthur Andersen study, is an exhibit submitted by Respondents in response to Petitioner's pretrial discovery requests and received by the District Court under seal for the use of court and counsel only. Such exhibit provides profit and loss data for the individual clubs and for the aggregate of all clubs for each of the years 1965-69. Reference is made to such exhibit for the financial details referred to herein.

** The aggregate results for all 24 clubs in 1969 showed total losses in the millions. (Pl. Ex. 7.)

Francis Dale, the President of the Cincinnati club, testified that his club could not engage in open competition for players with clubs located in the larger cities. "[I]n such a system the poorer or weaker franchises would not be able to compete for the better players and therefore baseball would be destroyed. . . ." (R. 1280-81.) Other club and league officials and the Arthur D. Little economist testified to the same effect. (*E.g.*, App. 280-81, 337, 342-43; R. 880, 1383, 1474.)

There is no way, without a reserve system, to prevent baseball's inherent gross disparities in income and resources from being translated into even wider disparities in team strength. The 1952 House Committee Report on Organized Baseball—an exhaustive study of the game and its history—put it quite plainly: "[E]xperience points to no feasible substitute to . . . guarantee a comparatively even struggle." House Report No. 2002, 82d Cong., 2d Sess. (1952), p. 229 (Pl. Ex. 15-a).*

(b) *Preservation of Integrity and Public Confidence.*

Without public confidence in its integrity, baseball would certainly fail. The Commissioner of Baseball, whose principal task it is to protect the integrity of the game, testified at length at trial concerning the relationship between the reserve system and integrity. (App. 253-54.) The uncontradicted history reviewed by him shows that in the era before the reserve system an unhealthy climate prevailed, which resulted in rampant dishonesty and public disrespect for the game. (App. 243-45.) This early history is strong

* Nevertheless, Petitioner argues that baseball's reserve system has not worked, pointing to the fact that "four teams have won 63% of the league championships in the last half century," as contrasted to the 25% which four teams would win in a perfectly balanced 16 team structure. (Pet. Br., p. 44.) What Petitioner overlooks is that no system can provide perfectly balanced competition, and that the reserve system has provided to the public continuously stimulating competition to a degree that would have been impossible without it. (App. 363-64.)

evidence that an effective reserve system is necessary to the maintenance of integrity. (App. 253-54.)

Integrity and public confidence are the product of numerous factors, including stable league organization, prosperity for the players, and rules enforced by the Commissioner prohibiting practices which would jeopardize the game's integrity. At the root of all of these factors is the reserve system, with the stability and continuity which it ensures.

To eliminate the reserve system would be to place in jeopardy the goodwill and public confidence which baseball has earned over the decades. As the 1952 House Committee said about the reserve system in its Report on Organized Baseball: "[E]xperience points to no feasible substitute to protect the integrity of the game. . . ." House Report No. 2002, 82d Cong., 2d Sess. (1952), p. 229 (Pl. Ex. 15-a).

(c) ***High Costs of Player Development.***

Witnesses for both parties to the present dispute recognized that the employment continuity provided by the reserve system is necessary to protect, and provide incentive for, the clubs' extraordinarily high player development costs. (*E.g.*, R. 247, 718-20, 1245-46.)

Unlike other professional sports which can select nationally known star players from college campuses where they have received extensive training, experience and publicity,* baseball must develop its own talent at great expense and effort (R. 938-39). According to the report prepared by Arthur D. Little, the player development costs and related expenses of minor league operations borne by the major leagues for the period 1963-67 totalled $118,000,000 (Def. Feeney Ex. S, App. 482.)

* Commissioner Rozelle of the National Football League and Commissioner Kennedy of the National Basketball Association both testified that the colleges provided the training grounds for their sports and President Campbell of the National Hockey League said much the same about Canada's amateur hockey program. (App. 229, 238-39; R. 485-86.)

This expenditure represents an average of $23,000,000 each year (almost $1,000,000 for each club), or 25% of the clubs' operating revenues. Stated otherwise, during that period the clubs spent $316,000 for each player brought up to fill vacancies on major league rosters. (Def. Feeney Ex. S, App. 482.) These expenditures support and make possible a large minor league system of over 150 clubs in 21 leagues, a system of player development peculiar to baseball which affords entertainment to twelve million fans annually. (Def. Feeney Ex. H; R. 994-95, 1106.)

These costs of player development give baseball clubs a greater stake in the control of their rosters than clubs in any other professional sport. The incentive to continue such expensive development is dependent upon the continuation of an effective reserve system to protect baseball's investments.

(d) *Benefits from Economic Stability.*

The stability engendered by the reserve system has permitted most baseball clubs over the years to achieve a measure of economic viability not possible before the reserve system was adopted. But such stability has not been a one-way street. The reserve system has also resulted in increased economic benefits to the players. Under the reserve system, major league baseball has grown to a nationwide structure of twenty-four clubs employing some six hundred players. (App. 249.) For *all* of these players, the economic rewards are impressive.

In 1970, the average major league player's basic salary was over $28,000, exclusive of bonuses, various cash allowances and other fringe benefits (R. 1659). Under the reserve system, each player negotiates salary adjustments

with his club annually.* The Arthur D. Little report showed that, for all players on major league rosters at least 60 days each year between 1965 and 1970, the average aggregate salary increase during the period was 129.4%. (Def. Feeney Ex. S, App. 473.)

In addition, through collective bargaining, players have received substantial increases in fringe benefits. (See pp. 15-17, *infra*.) The clubs' contribution to the players Benefit Plan, for example, totalled $5,450,000 in 1969, an increase of $2,850,000 over the contribution in 1965. (Def. Feeney Ex. S, App. 480; App. 493.) As a result, baseball offers its players a health care and pension program which is as fine as any in the nation.** For example, Mr. Flood, or any other player with twelve years of experience, is now entitled to a pension at age 65 of $1,625 per month or almost $20,000 per year. (Def. Feeney Ex. M; R. 1695.) Additionally, the 1970 collective bargaining agreement between the Players Association and the clubs resulted in gains for the players aggregating approximately $4,000,000 over three years, exclusive of pension and health care benefits. (App. 329.)

Overall, for 1965-69, the aggregate amounts paid in player salaries and benefits increased sharply, rising by approximately 50% during the period. (Pl. Ex. 7.)*** During this same period, there was a steady decline in the

*The players' collective bargaining representative, the Players Association, in recognition of the desirability of individual salary negotiation in baseball, has relinquished any role in this area except for the establishment of minimum salary levels. (Def. Feeney Ex. N, App. 422, 445.)

**The plan provides retirement benefits which may be elected as early as age 45, disability and widows' benefits, life insurance and accidental death and dismemberment benefits, health and dental care benefits and an optional severance allowance. (Def. Feeney Ex. S, App. 480; Def. Feeney Ex. M; App. 333-36, 493-95.)

***Petitioner's brief (p. 44) asserts that player compensation has declined as a percentage of baseball revenues. Although there has been a decline from the percentages recorded for the first half of this century, *the players' percentage of revenues has steadily increased in recent years.* The decline from percentages found in an earlier era is directly attributable to higher stadium and other operating costs and the burden of subsidizing the minor leagues which the major leagues have assumed in recent years.

net operating margin—computed on the basis of current cash items and considering only baseball operating expenses—realized by the clubs, from 12.5% of gross revenues in 1965 to 3.7% in 1969. (Def. Feeney Ex. S, App. 485-86.) Moreover, on a conventional accounting basis, the aggregate financial results for the twenty-four clubs showed losses in the millions. (Pl. Ex. 7.) Considering these facts, in conjunction with the increasing share of revenues currently devoted to player compensation, the Little report concluded that baseball is at a marginal level in generating operating revenue to pay operating expenses. (Def. Feeney Ex. S, App. 486.)

There simply is no evidence that the reserve system has had an adverse impact on the players as a whole. Star players, such as Mr. Flood, enjoy true star salaries and even marginal players are extremely well compensated by any standards.

The importance of the reserve system to baseball—all of baseball—cannot be seriously challenged. But Petitioner, despite the record at trial to the contrary, continues to argue that the reserve system is principally an instrument of oppression employed against the players.* The District Court provided a clear answer to that argument:

> "Prior to trial we gained the impression that there was a view, held by many, that baseball's reserve

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* Petitioner's brief attempts to describe some alleged abuses. It asserts that a club cannot release a player even if it wants to because other clubs have claiming rights to his contract. (Pet. Br., p. 9.) But, as a result of collective bargaining, the rule referred to was recently changed to permit a released player to refuse any claim and thus to choose his own club. Petitioner's brief also says that players "may not be accompanied in contract negotiations by any attorney, representative, or translator." (Pet. Br., p. 10.) But Petitioner's counsel knows better. The 1970 collective bargaining agreement contains a provision expressly recognizing the right of a player to be accompanied in salary negotiations by the representative of his choice. (Def. Feeney Ex. N, App. 423; App. 192-93.)

system had occasioned rampant abuse and that it should be abolished. We were struck by the fact, however, that the testimony at trial failed to support that criticism; we find no general or widespread disregard of the extremely important position the player occupies." 316 F.Supp. at 276 (App. 103).

(e) *Equivalent Practices in Other Professional League Sports.*

Petitioner's brief states that baseball's system is the most restrictive in professional sports and suggests that baseball's antitrust status has enabled it to retain practices not found in the other sports. (Pet. Br., p. 18.) But the evidence at trial demonstrated that the rules of football, hockey and basketball are essentially the equivalent of baseball's rules. Each sport drafts and reserves players, assigns or "trades" player contracts, prohibits "tampering" with rival players, functions under a Commissioner or President with powers similar to the Commissioner of Baseball, and operates with a system of league rules and a standard form of player contract.

Where there are differences, they are slight and more cosmetic than real. As to the most significant apparent difference, the so-called football option rule, Mr. Miller, the Baseball Players Association Executive Director, testified that the rule was a "semi-fraudulent" camouflage for its reserve system.* (App. 378-79.)

With respect to professional hockey the only noticeable difference is the procedure—recently adopted *as a result*

* In professional football, a player may announce at the beginning of a season that he intends to be a free agent at the end of that season. He then accepts a 10% salary cut and is free at the end of the season to contract with a new club *which must compensate his former club as directed by the Commissioner*. The evidence at trial indicated that as a result of this latter restriction very little player mobility has resulted. (App. 213-15, 386.)

of collective bargaining—for the arbitration of salary disputes, which at the time of trial had not been used. (App. 240-42; R. 588.) Otherwise, hockey's rules are essentially like baseball's. (Pl. Exs. 18, 19 and 20.)

The evidence at trial showed that the reserve system of the National Basketball Association is also essentially the same as baseball's. Indeed, the NBA renewal option clause is written in language almost identical to baseball's. (Pl. Exs. 16 and 17; App. 223-24.)

Since the trial of this action, as part of its efforts to persuade the basketball players association to join in supporting before Congress the merger of the two professional basketball leagues, the NBA has apparently offered to modify its reserve system in the manner indicated by the letter attached to Petitioner's brief as Appendix B. The circumstances surrounding this offer, *made in a collective bargaining context*, are not known to Respondents and are wholly outside the record of this action.

Petitioner had adequate opportunity to obtain the complete facts as to the other professional sports at trial when the Commissioner of each sport was present as a plaintiff's witness and the rules and player contracts of each sport were put into evidence. Dissatisfied with the evidence so adduced, Petitioner has turned his back on the record and relied instead on newspaper accounts and material taken from the current collective bargaining process of professional basketball. In any event, Petitioner's post-trial "evidence" of proposed modifications in the basketball reserve system cannot obscure the basic similarity of the systems employed by all professional league sports and only serves to emphasize what Respondents have said from the beginning—that collective bargaining can produce accommodation acceptable to all concerned.

(2) The Reserve System and Collective Bargaining.

Professional baseball players have an especially potent collective bargaining organization. As the District Court found:

> "The Major League Baseball Players' Association, organized in 1954, has proved a particularly effective bargaining representative obtaining since 1966 highly significant benefits for the players in such areas as pensions, life and disability insurance, health care, minimum salary, arbitration of grievances, expense allowances, maximum permissible salary cut, termination pay, representation at individual salary negotiations, negotiation of rule changes affecting player benefits or obligations, due process in player discipline." 316 F. Supp. at 283 (App. 116-17).

Ever since 1966, when full scale collective bargaining came to baseball, the reserve system—recognized by all parties as a *manddtory subject of bargaining*—has been among the subjects under negotiation between the clubs and the Players Association. 316 F. Supp. at 283 (App. 117).

In 1967, as part of the negotiations leading up to the adoption in February 1968 of the first "Basic Agreement" between the Players Association and the clubs, the Association included in its bargaining agenda a general suggestion that the reserve clause should be altered. (Def. Feeney Ex. O, App. 453-54; App. 503-09.) As modified in certain particulars,* the reserve system was incorporated into this Basic Agreement. (See pp. 45-47, *infra*.)

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* For example, the renewal option clause (Addendum B hereto) was amended to limit the salary reduction permissible upon contract renewals thereunder to 20% of the player's previous salary (Def. Feeney Ex. F, p. 16); the minimum player salary was raised by over 40% (Def. Feeney Ex. F, p. 15), and a formal procedure for arbitration of player grievances was established (Def. Feeney Ex. F, pp. 3, 18-24). Also, it was agreed that a joint labor-management study of the reserve system would be undertaken during the term of the agreement. The joint study subsequently took place as a "free-wheeling, in depth exploration" which both sides considered "useful." (App. 366, 510-12; R. 1918-20.)

In 1969, negotiations began on a new Basic Agreement. The Players Association presented the clubs with a list of "problems which stem from or are made more severe by the present reserve clause and related rules." (Def. Feeney Ex. Q, App. 462.) This list was carefully considered in negotiations between the parties and eventual accord was reached with respect to substantially all of the "problems" listed.*

Bargaining concerning the core of the reserve system as well was conducted by the parties; however, the Players Association did not make a specific proposal for a change in the system until October 31, 1969.** Shortly thereafter,

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* Among the various changes agreed to in the negotiations over the 1970 Basic Agreement were the following which are directly related to "problems" listed in the Players Association memorandum: (a) substantially increased termination pay, including a provision that after 1971 a player whose contract is terminated by the club after May 15 of any year will receive his full year's salary (App. 498, 500); (b) specific acknowledgment of each player's right to be accompanied at salary negotiations by a person of his choice (Def. Feeney Ex. N, App. 423; App. 518); (c) moving allowance provided for players whose contracts are assigned during the off season (Def. Feeney Ex. N, App. 421); (d) prohibition against clubs unilaterally changing rules which involve player benefits or impose obligations on players (Def. Feeney Ex. N, App. 422); and (e) provision for third-party arbitration of grievances (Def. Feeney Ex. N, App. 422).

** The proposal was that, after every three years of his career, each player may negotiate for a higher salary with any club, with his original club having a right of first refusal at the highest salary offered. The clubs, after giving this opening proposal thorough consideration at their regular winter meeting in December 1969, found it unacceptable. (Def. Feeney Ex. R, App. 470-72; App. 519.) Following commencement of this action, this specific offer was withdrawn by the Association, and various other suggested alternatives to the present reserve system were discussed. (App. 404-05.) Among these was the proposal that the reserve system be made inapplicable to a player after age 65. This tongue-in-cheek proposal, which Petitioner attempts to dignify in his brief (Pet. Br., p. 43), was neither seriously made nor received. (R. 1626-29.)

in November 1969, discussions were held between Mr. Flood and the Players Association concerning the filing of the present suit. At a meeting of the Players Association Executive Board in San Juan in mid-December 1969, at which Mr. Flood was present, the Association agreed to assume the financing of this action (App. 169). The complaint was filed on January 16, 1970.

Negotiations with respect to the reserve system, along with other important employer-employee issues, continued up to and briefly after the filing of the action. However, in February 1970, the parties found themselves frustrated by the litigation and therefore unable to bargain effectively on the reserve system. Accordingly, it was agreed that bargaining on the reserve system would be suspended pending the final outcome of the action; and the new three-year Basic Agreement*, ultimately entered into, contained a specific provision to that effect. (Def. Feeney Ex. N, App. 428; App. 368-69, 405-06.)

By the commencement of this litigation, the Players Association was able to transfer this segment of its labor relations dispute with the clubs to the federal courts. There the collective bargaining issues concerning the reserve system were extensively ventilated, so that at times the trial appeared to be a labor negotiation. Petitioner's

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* In addition to the player benefits referred to at pp. 15-16, *supra*, the new Basic Agreement *inter alia*: (a) liberalized contract provisions regarding participation in other sports (Def. Feeney Ex. N, App. 423; R. 269); (b) amended Paragraph 10(a) of the Uniform Player's Contract to provide that a player's salary can be reduced by no more than an aggregate of 30 percent in two successive seasons (Def. Feeney Ex. N, App. 422; App. 500; R. 273-75); (c) increased the players' share of the receipts of divisional playoff and world series games (Def. Feeney Ex. N, App. 418-19; App. 497-99); (d) substantially increased spring training and miscellaneous in-season expense allowances (Def. Feeney Ex. N, App. 419-21; App. 499-500); and (e) raised the minimum salary to $12,000 in 1970, $12,750 in 1971, and $13,500 in 1972 (Def. Feeney Ex. N, App. 419; App. 499).

principal witness, Mr. Miller, the Executive Director of the Players Association, put forth a number of possible modifications of the reserve system which he indicated might be acceptable to the Association. Respondents, in turn, presented comments on each of these proposals, which resulted in certain changes in the proposals tendered by the Association. (*E.g.*, R. 881-82, 1063-4, 1332.)*

Mr. Miller also testified that he had told the clubs' representatives that the action would be withdrawn if there were amendments in the reserve system "acceptable to the players as a group." (App. 369.) This statement perfectly characterizes the posture of the Players Association and Petitioner. Impatient with the process of collective bargaining, without cause to file an unfair labor practice charge for refusal to bargain, and eager to obtain the assistance of the federal courts to bend the clubs to their demands, the Players Association has Petitioner here seeking to have the federal courts act as arbitrator in the *compulsory arbitration* of its labor dispute with the clubs.

The District Court was well aware of the federal labor policy which sends the parties to the collective bargaining

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* As an example of this courtroom bargaining, Mr. Miller proposed that the clubs adopt an arbitration procedure for settling individual player salary disputes (App. 189-90). When Respondents' witnesses pointed out that the availability of arbitration would inhibit realistic negotiation between the player and his club—with each side being unwilling to make concessions which would impair its posture before the arbitrator—counsel for Petitioner responded by proposing that the arbitrator be limited to choosing either the final offer of the player or that of the club (R. 1332). Whatever the merits of this proposal, it plainly belongs on the bargaining table, not in the courtroom. Other possibilities suggested at trial by Mr. Miller and Petitioner's other witnesses included: automatic salary progression arrangements, reduction in the number of reserved players, separation of the National and American Leagues, a limitation on reserve rights to a fixed number of years for each player, and the adoption of long term contractual arrangements. (App. 180-81, 188-90, 385-86.)

table to seek their own accommodation, with the processes of the National Labor Relations Board being available to insure fair play. Thus, the District Court concluded that the issue of the reserve system, concededly a mandatory subject of collective bargaining, should be resolved by player-club negotiation rather than by the courts. The District Court, after reviewing all of the evidence, stated that negotiation preserving its "necessary features" would "fashion the reserve clause so as to satisfy all parties"; "these issues can and should be resolved by negotiations between the players and the club owners"; "the conflicts between the parties are not irreconcilable and . . . negotiations could produce an accommodation on the reserve system which would be eminently fair and equitable to all concerned—in essence, what is called for here is continuity with change." 316 F.Supp. at 276, 278, 282 (App. 103-04, 108, 115).

In an attempt to avoid the controlling labor relations significance of this dispute, Petitioner asserts the virtual bankruptcy of the collective bargaining process in baseball, arguing that player bargaining power is weak and that the clubs have adamantly refused to negotiate on the reserve system. (Pet. Br., p. 43.) But the District Court's opinion after trial is quite to the contrary. Far from finding the Association impotent and the clubs intransigent, the District Court stated that the Association was an "effective" representative and that the parties involved in collective bargaining, "positive and reasonable men who are equally watchful over a common objective, the best interests of baseball," are "best able to reach a satisfactory accord," and "that all avenues toward such an approach certainly have not yet been fully exhausted." 316 F. Supp. at 284 (App. 119-20).*

* Even if Petitioner were correct and the clubs had failed to bargain in good faith, the exclusive remedy would be to file an unfair labor practice charge with the National Labor Relations Board.

Summary of Argument

Petitioner asks this Court to hold the century-old fundamental operating arrangements of baseball *per se* illegal under the Sherman Act, (1) in the face of decisions of this Court running in an unbroken line for over 50 years that the internal structure and rules of baseball are not subject to that Act, and (2) in the face of this Court's determination that any change in baseball's status must be left to the more orderly processes of Congress. *Federal Baseball Club of Baltimore* v. *National League*, 259 U.S. 200 (1922); *Toolson* v. *New York Yankees, Inc.*, 346 U.S. 356 (1953). In this formidable undertaking, Petitioner is allied with and financially supported by the Major League Baseball Players Association, collective bargaining representative of the players.

Prior to trial, Petitioner argued to the District Court that new facts and circumstances could be demonstrated which would show the present invalidity of this Court's baseball decisions. Put to his proof, Petitioner failed. The District Court found no new facts or circumstances to support the overturning of baseball's antitrust status.

But facts and circumstances were presented at trial which strongly support adherence to precedent. Continued reliance by baseball on the legality of its operations was demonstrated. The history of Congressional consideration of baseball's antitrust status showed thorough and constant attention, favorable findings, and no legislation disturbing this Court's rulings.

The vital importance of the reserve system to baseball was proved, as the evidence demonstrated that such a system was essential to maintain balanced competition and preserve the game's integrity. The economics of baseball were examined, and it was shown that player compensation is

excellent and that club operations are largely unprofitable. Also, baseball's player development operations were demonstrated to consume 25% of its revenues, a unique circumstance in sports which gives baseball clubs a vital stake in the talent which they develop.

Perhaps most significant, this action was recognized for what it plainly is—a labor dispute. The reserve system was conceded to be a mandatory subject of bargaining under the federal labor laws and the efficacy of collective bargaining in baseball was proved. Accordingly, the District Court concluded that the dispute represented by this action could best be resolved by the parties themselves through collective bargaining without outside interference.

All of these facts and circumstances, plus the important policy represented by the doctrine of *stare decisis*, compellingly indicate that this Court should reaffirm its precise and well-confined rulings that the fundamental structure and rules of baseball are not subject to the antitrust laws.

Moreover, the evidence adduced at trial demonstrated that federal labor policy also bars the application of the antitrust laws to the reserve system. *Teamsters Union* v. *Oliver*, 358 U.S. 283 (1959); *Amalgamated Meat Cutters* v. *Jewel Tea Co.*, 381 U.S. 676 (1965). As a mandatory subject of bargaining, the reserve system is automatically exempt under Justice Goldberg's concurring opinion in *Jewel Tea*. And as a matter exclusively affecting employees, with no anti-competitive effect beyond the bargaining unit, the reserve system also is exempt under Justice White's opinion in *Jewel Tea*.

State antitrust regulation has never been applied to baseball. Every court which has considered the issue has found such regulation to be inappropriate, either because of baseball's need for national uniformity and the serious interfer-

ence which piecemeal state regulation would cause, or because federal policy has endorsed baseball's self-regulation subject to the will of Congress.

Petitioner's principal contention against these points is that Respondents have succeeded, by various inconsistent arguments, in placing themselves above the law and that the federal antitrust laws must be applied if baseball is to be held accountable in any forum. This rhetorical contention is contrived.

Petitioner says that baseball argues to the courts that Congress is the proper forum for any reconsideration of baseball's status under the antitrust laws. Respondents do indeed take that position, supported by the repeated decisions of this Court precisely to that effect.

But Petitioner also says that baseball argues to Congress "that the courts are adequate and legislation unnecessary." (Pet. Br., p. 3.) This is simply not true. Baseball has never said to Congress that "the courts are adequate." What has been and is urged is the inapplicability of the antitrust laws, the effectiveness of self-regulation and collective bargaining, and the necessity for special sports legislation if federal regulation were ever found to be desirable.

Petitioner recognizes that baseball opposes state antitrust regulation. (Pet. Br., p. 3.) But Petitioner also says that baseball argues to proponents of federal regulation that "state regulation suffices." (Pet. Br., p. 3.) Again, Petitioner is quite mistaken. Baseball has consistently opposed any fragmentary and conflicting state antitrust regulation of its structure and rules.

Baseball remains subject to regulation by Congress at any time, and any determination concerning the application of regulatory measures should be left to that body. This Court should continue to adhere to its prior decisions holding the federal antitrust laws inapplicable to the structure and rules of baseball and should affirm the decisions below barring state antitrust regulation.

ARGUMENT

I.

Sound Reasons Support Adherence To The Long, Unbroken Line Of Precedent In This Court Holding That Baseball's Reserve System Is Not Subject To The Federal Antitrust Laws.

During the nearly one hundred years that baseball has developed and expanded with the reserve system as an integral part of the game, this Court has on at least five occasions, beginning in 1922, considered the question presented here—whether baseball's reserve system is subject to the federal antitrust laws.* Each time, the Court's conclusion has been the same: "Congress had no intention of including the business of baseball within the scope of the federal antitrust laws." *Toolson* v. *New York Yankees, Inc.*, 346 U. S. at 357.

Moreover, as this unbroken line of precedent continued, the Court repeatedly noted the significant reliance and *stare decisis* considerations which had grown out of and buttressed its earlier decisions in this area. It noted as well the flood of litigation and harassment that would ensue and the burden that would be placed upon baseball if its basic practices were exposed to antitrust attack. In view of these considerations, the Court concluded that "more

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* *Federal Baseball Club of Baltimore* v. *National League*, 259 U. S. 200 (1922); *Toolson* v. *New York Yankees, Inc.*, 346 U. S. 356 (1953); *United States* v. *Shubert*, 348 U. S. 222, 229-30 (1955); *United States* v. *International Boxing Club*, 348 U. S. 236, 242 (1955); *Radovich* v. *National Football League*, 352 U. S. 445, 450-52 (1957). See also *Salerno* v. *American League*, 429 F.2d 1003 (2d Cir. 1970); *cert. denied*, 400 U. S. 1001 (1971).

harm would be done in overruling" its prior decisions than in adhering to them. *Radovich* v. *National Football League*, 352 U. S. at 450.

A. This Court, While Consistently Reaffirming the Nonapplicability of the Federal Antitrust Laws to Baseball's Reserve System, Has Carefully Eliminated Any Possible Adverse Consequences of This Long-standing Precedent.

The first antitrust case involving baseball to reach this Court was *Federal Baseball Club of Baltimore* v. *National League*, 259 U. S. 200 (1922). The Federal Baseball Club claimed that the National and American Leagues, among the Respondents here, had conspired to monopolize the baseball business by means of its reserve system and league organization. The trial court found for the plaintiff, but the Court of Appeals reversed. 269 Fed. 681 (D.C. Cir. 1921). This Court, in an opinion by Mr. Justice Holmes, unanimously affirmed the decision of the Court of Appeals.*

It was clear from the outset that the Court's opinion in *Federal Baseball* was a limited decision, grounded on a realistic perception of the unique characteristics and needs of professional baseball in contrast to other business activities. Indeed, in its very next term, the Court, in another opinion by Mr. Justice Holmes, unanimously reversed a lower court's dismissal on the authority

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* Justice Holmes stated that "the decision of the Court of Appeals went to the root of the case. . . ." 259 U. S. at 208. The Court of Appeals had recognized baseball's unique needs, finding *inter alia* that: "If the reserve clause did not exist, the highly skillful players would be absorbed by the more wealthy clubs, and thus some clubs in the League would so far outstrip others in playing ability that the contests between the superior and inferior clubs would be uninteresting, and the public would refuse to patronize them." *Federal Baseball Club of Baltimore* v. *National League*, 269 Fed. 681, 687 (D.C. Cir. 1921).

of *Federal Baseball* of an antitrust complaint concerning the booking and presentation of vaudeville acts. *Hart* v. *B. F. Keith Vaudeville Exch.*, 262 U. S. 271 (1923). But the Court in *Hart*, as in subsequent decisions, referred to *Federal Baseball* and plainly left it undisturbed. 262 U.S. at 273-74.

As the years passed, professional baseball continued to be an unusually prominent aspect of American life. And the immunity from antitrust attack of its fundamental and structural agreements, regulations and player control arrangements was accepted as a settled fact in the baseball community.

In the late 1940's, however, the Court of Appeals for the Second Circuit, in a split decision, refused to follow *Federal Baseball* and reversed the trial court's dismissal of an antitrust complaint filed by a player against the then Commissioner of Baseball. *Gardella* v. *Chandler*, 172 F.2d 402 (2d Cir. 1949), *rev'g* 79 F. Supp. 260 (S.D.N.Y. 1948).*. Although Gardella's case was subsequently settled without further court proceedings, the Second Circuit's sudden departure from precedent quickly produced significant repercussions.

A number of lawsuits involving the reserve system were filed, three of which reached this Court,** directly challenging the *Federal Baseball* ruling.* The plaintiffs in two of these cases were baseball players, and in the third case the plaintiff was a minor league club owner. After hearing all

* Gardella had breached his contract with the New York Giants and signed to play in the Mexican League. As a result, he was declared temporarily ineligible for play in professional baseball by A. B. Chandler, then Commissioner of Baseball.

** *Toolson* v. *New York Yankees, Inc.*; *Kowalski* v. *Chandler*; *Corbett* v. *Chandler*. All three cases were decided at 346 U. S. 356 (1953).

three cases together, this Court explicitly reaffirmed the result of *Federal Baseball,* in *Toolson* v. *New York Yankees, Inc.,* 346 U. S. 356 (1953), with this *per curiam* opinion:

> "In *Federal Baseball Club of Baltimore* v. *National League of Professional Baseball Clubs,* 259 U. S. 200 (1922), this Court held that the business of providing public baseball games for profit between clubs of professional baseball players was not within the scope of the federal antitrust laws. Congress has had the ruling under consideration but has not seen fit to bring such business under these laws by legislation having prospective effect. The business has thus been left for thirty years to develop, on the understanding that it was not subject to existing antitrust legislation. The present cases ask us to overrule the prior decision and, with retrospective effect, hold the legislation applicable. We think that if there are evils in this field which now warrant application to it of the antitrust laws it should be by legislation. Without reexamination of the underlying issues, the judgments below are affirmed on the authority of *Federal Baseball Club of Baltimore* v. *National League of Professional Baseball Clubs, supra,* so far as that decision determines that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws." 346 U. S. at 356-57.

In subsequent decisions, this Court has reaffirmed and reiterated the special factual considerations which support continued adherence to *Federal Baseball,* while at the same time ensuring that enforcement of the antitrust laws in other areas is not affected.

In *United States* v. *Shubert,* 348 U. S. 222 (1955), the Court held the antitrust laws applicable to the operations

of theatrical booking agents, producers and theatre operators. Distinguishing the baseball cases, the Court stated:

> "In *Toolson*, where the issue was the same as in *Federal Baseball*, the Court was confronted with a unique combination of circumstances. For over 30 years there had stood a decision of this Court specifically fixing the status of the baseball business under the antitrust laws and more particularly the validity of the so-called 'reserve clause.' During this period, in reliance on the *Federal Baseball* precedent, the baseball business had grown and developed. Compare *Helvering* v. *Hallock*, 309 U. S. 106, 110. And Congress, although it had actively considered the ruling, had not seen fit to reject it by amendatory legislation. Against this background, the Court in *Toolson* was asked to overrule *Federal Baseball* on the ground that it was out of step with subsequent decisions reflecting present-day concepts of interstate commerce. The Court, in view of the circumstances of the case, declined to do so. But neither did the Court necessarily reaffirm all that was said in *Federal Baseball*. Instead, '[w]ithout re-examination of the underlying issues,' the Court adhered to *Federal Baseball* 'so far as that decision determines that Congress had no intention of including the business of baseball within the scope of the federal antitrust laws.' 346 U. S. at 357. In short, *Toolson* was a narrow application of the rule of *stare decisis*." 348 U. S. at 229-30.

Again, in *United States* v. *International Boxing Club*, 348 U. S. 236, 242 (1955), the Court, while holding the Sherman Act applicable to the activities of boxing match promoters, was careful to note that "none of the factors underlying the *Toolson* decision are present in the instant case."[2]

Finally, in *Radovich* v. *National Football League*, 352 U. S. 445 (1957), this Court again repeated in unequivocal

terms its ruling as to the inapplicability of the antitrust laws to professional baseball. While upholding in that case the sufficiency of an antitrust complaint brought by a player against professional football, this Court strongly reaffirmed the *Toolson* decision and further elaborated the important underlying considerations:

> "In *Toolson*, we continued to hold the umbrella over baseball that was placed there some 31 years earlier by *Federal Baseball*. The Court did this because it was concluded that more harm would be done in overruling *Federal Baseball* than in upholding a ruling which at best was of dubious validity. Vast efforts had gone into the development and organization of baseball since that decision and enormous capital had been invested in reliance on its permanence. Congress had chosen to make no change. All this, combined with the flood of litigation that would follow its repudiation, the harassment that would ensue, and the retroactive effect of such a decision, led the Court to the practical result that it should sustain the unequivocal line of authority reaching over many years." 352 U. S. at 450-51. (Footnotes omitted.)

In all of these cases, spanning many years, this Court has repeatedly and definitively resolved the issue presented here contrary to the position now urged by Petitioner. Seldom, if ever, has precedent so squarely and uniquely controlled a case as here.*

* Since *Radovich*, federal courts have on at least three occasions dismissed complaints against baseball alleging federal antitrust violations. *Portland Baseball Club, Inc.* v. *Frick (Baltimore Baseball Club, Inc.)*, 282 F. 2d 680 (9th Cir. 1960); *Salerno* v. *American League*, 429 F. 2d 1003 (2d Cir. 1970), *cert. denied*, 400 U. S. 1001 (1971); *Portland Baseball Club, Inc.* v. *Kuhn*, Civil Nos. 71-53, 71-54, D. C. Ore., December 28, 1971.

The baseball cases do not impair the enforcement of federal antitrust policy in any other area. This Court has made clear that the rule established in the baseball cases is strictly limited to organized professional baseball. *Radovich* v. *National Football League,* 352 U. S. at 451.

Moreover, baseball has always recognized the narrow applicability of such precedents even to it, and has never considered them blanket immunity from all antitrust regulation. Rather, baseball has interpreted the *Toolson* rule to mean only that its historic and evolving internal structure and rules are not subject to antitrust attack. The 1964 memorandum of Paul Porter, counsel for the Commissioner, to Commissioner Frick (referred to in Petitioner's Brief at p. 25) provides an illustration of this view.* Mr. Porter's memorandum considered the acquisition of the New York Yankees by the Columbia Broadcasting System and advised that *Toolson* did not cover any antitrust issues which might be presented by the acquisition by CBS of a baseball club. The District Court adopted this limited view of the scope of the *Toolson* doctrine (312 F. Supp. at 407 n. 3; App. 86) as did the Wisconsin Supreme Court in 1966. *Wisconsin* v. *Milwaukee Braves, Inc.,* 31 Wis. 2d 699, 725, 144 N.W.2d 1, 15 (1966), *cert. denied,* 385 U. S. 990 (1966). The Wisconsin Court observed that baseball's "exemption does not cover every type of business activity to which a baseball club or league might be a party . . ." but that coverage clearly includes at least baseball's "agreements and rules which provide for the structure of the organization and the decisions which are necessary steps in maintaining it." Nothing more than these fundamental structural elements and rules—the same matters repeatedly considered

* "Background Memo on CBS Acquisition of Yankees," Oct. 7, 1964, contained in the record of 1965 Senate Hearings on Professional Sports Antitrust Bill. *Hearings on S. 950 Before the Sub-Comm. on Antitrust and Monopoly of the Senate Judiciary Comm., 89th Cong., 1st Sess. (1965),* p. 159.

and found necessary by committees of Congress—have ever been presented to this Court; and it is only these essential sports aspects and practices which *Toolson* shields.

Despite Petitioner's arguments, there are no broad principles at stake here. The issue is simply whether this Court should abandon its historic position that the structure and rules of baseball are not subject to the antitrust laws. The record in this action utterly fails to support such a drastic step.

B. The Record in This Case Demonstrates Affirmative Grounds for Continued Adherence to *Toolson*.

(1) Baseball's Continuing Reliance on this Court's Prior Decisions.

Federal Baseball and *Toolson* have for decades provided baseball clubs with a clear guide for conduct, to enable them to plan their affairs with assurance. This judicial guide has been at the very core of the development of baseball as it is today.

The record in this case shows, without contradiction, that baseball clubs have continued since *Toolson* and *Radovich* to invest millions of dollars in player contracts and other baseball assets (Pl. Exs. 10-11), to build private stadiums and enter into long term leases on public stadiums (App. 290-91; R. 1454-58, 1752), to acquire new franchises at costs reaching ten million dollars each (Pl. Exs. 10-11) and to make numerous other commitments, all in reliance upon baseball's antitrust exemption and in particular upon the validity of baseball's reserve system.

The testimony of Francis Dale (App. 291-94), Ewing Kauffman (App. 325-26), John McHale (R. 1313-19) and Robert Reynolds (R. 1358-60), all men who have purchased

or participated in the purchase of major league clubs since *Toolson,* was unanimously and pointedly to the effect that the investments which they had made in baseball would never have been made if the baseball business were not protected by the *Toolson* exemption. In each case this reliance on baseball's historic exemption was quite explicit and significant, not merely a matter of casual interest.

Moreover, Mr. Kauffman, the president of the new Kansas City club, testified that his understanding of the reserve system—that he could retain control over the players which he developed—provided the rationale for his investment of well over a million dollars in his new baseball player academy (R. 1459-67). Mr. Kauffman brings to his academy young athletes with little or no baseball experience and little chance to reach college. At the academy the Kansas City club evaluates and develops their potential, while at the same time providing them with continuing education at the college level (R. 1461). Basic to this program is the knowledge that the Kansas City club will enjoy the benefit of the talent which his efforts may produce (R. 1459-67).

An examination of the Milwaukee Braves' prospectus of 1963 (Def. Feeney Ex. K), relating to the only recent public offering of stock in a baseball club, reveals the extent of investor reliance on the reserve system. The prospectus describes the reserve system, discloses that the Braves' player contracts constitute substantially all of its assets, describes each player under contract, and assures the investor that such contracts are "subject to the control of the Braves." (Def. Feeney Ex. K, p. 10.) It also observes that "the competitive success of a baseball club, which bears a strong relationship to its financial success, depends primarily upon the playing skill of players under contract to the club." (Def. Feeney Ex. K, p. 7.) Obviously, the reserve system was critical to any investor analysis of the Braves' offering.

Such examples could be repeated at length. The fact is that nothing could be more central to investor concern than baseball's antitrust status; and the continued reliance by baseball investors on *Toolson* strongly supports adherence to that decision. Judge Moore, concurring below, put it well:

> "Just as the Supreme Court in 1955 recognized that baseball 'had grown and developed' and 'in reliance on the *Federal Baseball* precedent,' *United States* v. *Shubert, supra,* 348 U. S. at 229, so much more has it grown between 1955 and 1971. The eight teams in each league have been expanded to twelve. . . . The reasons for adopting a 'hands off' policy by the courts of this particular sport have multiplied." 443 F.2d at 272 (App. 139-40).

(2) The Role of Congress.

In the *Radovich* decision, this Court plainly announced that baseball's status was for Congress to consider, not the courts. This Court held that "as long as the Congress continues to acquiesce we should adhere to . . . the interpretation of the [Sherman] Act made in" the earlier baseball cases. 352 U. S. at 451. This Court further stated:

> "We, therefore, conclude that the orderly way to eliminate error or discrimination, if any there be, is by legislation and not by court decision. Congressional processes are more accommodative, affording the whole industry hearings and an opportunity to assist in the formulation of new legislation. The resulting product is therefore more likely to protect the industry and the public alike . . . . [T]he doctrine of *Toolson* and *Federal Baseball* must yield to any congressional action and continues only at its sufferance." 352 U. S. at 452.

Despite Petitioner's efforts to turn this Court's words upside down to impose on Respondents the burden of obtain-

ing Congressional action, the *Toolson* and *Federal Baseball* rule was plainly intended to stand unless and until disturbed by Congress. The history of Congressional consideration of this subject not only fails to show that the rule announced by this Court should be disturbed, it shows affirmative support for that rule.*

Immediately following the *Radovich* decision in 1957, Congress began intensive consideration of various legislative proposals dealing with the antitrust laws and professional team sports.**

Most of these proposals would have extended antitrust immunity to the basic sports structure and practices of football, hockey and basketball—to match baseball's immunity.*** Such immunity would have expressly included the employment, selection and eligibility of players and the assignment of their contracts. Some proposals would have completely exempted from the antitrust laws all professional league sports, while others would have revoked baseball's status under *Toolson*. The record of this Congres-

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* Prior to *Toolson*, Congress was principally concerned about the ossification of the major league map which was limited to the northeast quadrant of the country and did not reflect the westward movement of population. Since that time, major league baseball has moved west and south (and to Canada as well) to present the game to the public on a truly national basis.

** In the House, Emanuel Celler, Chairman of the House Antitrust Subcommittee, said on June 17, 1957, at the opening of hearings: "[T]he obligation rests upon the Congress to determine whether the Supreme Court decisions are discriminatory and, if so, how this discrimination should be resolved." *Hearings on H.R. 5307, et al., Before the Antitrust Subcomm. of the Comm. on the Judiciary, 85 Cong., 1st Sess. (1957)*, p. 1.

*** Baseball has consistently supported such legislation. *E.g.*, testimony of Ford C. Frick, Commissioner of Baseball, *Hearings on H.R. 10378 and S. 4070 Before Subcomm. on Antitrust and Monopoly of the Senate Judiciary Comm.*, 85th Cong., 2d Sess. *(1958), pp. 204-05; Hearings on S. 2391 Before Subcomm. on Antitrust and Monopoly of the Senate Judiciary Comm., 88th Cong., 2d Sess. (1964), p. 12.*

sional consideration is summarized in Defendants' Kuhn Ex. A, a stipulation covering the Congressional history during the period 1951-1970. Since November 1953, when the *Toolson* opinion was handed down, there have been over 50 bills introduced into Congress dealing with the applicability or non-applicability of the antitrust laws to organized baseball; and Congress has held numerous hearings during that time which have included consideration of the reserve system and the antitrust laws.

(1) In 1957, seven bills were introduced. They were of the three types referred to above. Approximately 30 witnesses testified in 15 days of hearings before the House Antitrust Committee concerned with these bills. *Hearings on H.R. 10378 Before Antitrust Subcomm. of the House Judiciary Comm., 85th Cong., 1st Sess. (1957).*

(2) In 1958, the House passed a bill exempting from the antitrust laws the essential structure and practices of all professional league sports, including their reserve systems (H.R. 10378). The bill had been amended on the floor of the House to delete language limiting the exempted activities to those "reasonably necessary." An identical bill was introduced in the Senate (S. 4070) and the Senate Antitrust Subcommittee held 12 days of hearings at which 37 witnesses testified. *Hearings on H.R. 10378 and S. 4070 Before Subcomm. on Antitrust and Monopoly of the Senate Judiciary Comm., 85th Cong., 2d Sess. (1958).* No action was taken on the Senate bill before the session ended.

(3) In 1959, hearings were held by the Senate Antitrust Subcommittee on a bill similar to the 1957 and 1958 bills, providing an antitrust exemption for the essential structure and practices of league sports. *Hearings on S. 616 and S. 886 Before Subcomm. on Antitrust and Monopoly of the Senate Judiciary Comm., 86th Cong., 1st Sess. (1959).* Hearings were also held in the House on comparable bills. *Hear-*

ings on H.R. 2370 et al., Before the Antitrust Subcomm. of the House Judiciary Comm., 85th Cong., 1st Sess. (1959).

(4) In 1960, hearings were held by the Senate Antitrust Subcommittee on a bill which would have continued baseball's antitrust exemption, with certain limitations, and granted antitrust immunity to the other league sports. *Hearings on S. 3483 Before Subcomm. on Antitrust and Monopoly of the Senate Judiciary Comm., 86th Cong., 2d Sess. (1960).* The bill was reported out, the limitations were removed on the floor, but the bill was recommitted and no further action was taken.

(5) In 1964, hearings were held by the Antitrust Subcommittee of the Senate on a bill similar to many of those previously introduced, granting exemptions for the essential structure and practices of sports. *Hearings on S. 2391 Before Subcomm. on Antitrust and Monopoly of the Senate Judiciary Comm., 88th Cong., 2d Sess. (1964).* The formal report of the Committee on the Judiciary concluded:

> "The Committee believes that the existing system of self-regulation in these team sports should be continued." Senate Report No. 1303, 88th Cong., 2d Sess. (1964), p. 8.

(6) In 1965 additional bills were introduced, similar to those considered in previous years. Hearings were held in the Senate. *Hearings on S. 950 Before Subcomm. on Antitrust and Monopoly of the Senate Judiciary Comm., 89th Cong., 1st Sess. (1965).* The Senate Antitrust Subcommittee reported favorably on a bill exempting the structure and fundamental practices of professional sports. Significantly, the Report stated:

> "These exemptions permit the use of the draft system and the 'reserve clause' in addition to regulations restricting the employment, selection and assignment

> of player contracts. The committee considers these exemptions as necessary to maintain competitive equality among the member clubs and leagues in the various sports." Senate Report No. 462, 89th Cong., 1st Sess. (1965), p. 13.

This bill was subsequently passed by the Senate, but no action was taken by the House.

Each bill which has passed either House of Congress (H.R. 10378, 85th Cong., 2d Sess. (1958) and Senate S. 950, 89th Cong., 1st Sess. (1965)), provided that the professional league sports would be exempt from the antitrust laws with respect to "the employment, selection or eligibility of players, or the reservation, selection, or assignment of player contracts", and provided as well that the franchise and league arrangements of the sports would be exempt.

Moreover, when Congress has enacted laws in the professional sports area, the effect of such laws invariably has been to codify or grant an antitrust exemption, not eliminate it. In 1961, Congress adopted the Sports Broadcasting Act, which permitted professional football,* and the other professional league sports, to adopt joint league telecasting practices. 75 Stat. 732 (1961), 15 U.S.C. §§ 1291-95.** In 1966, Congress enacted another measure for professional

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* Football had sought legislative action after it had been held in *United States v. National Football League*, 116 F. Supp. 319 (E.D. Pa. 1953) and 196 F. Supp. 445 (E.D. Pa. 1961), that certain aspects of its television policy were illegal under the Sherman Act.

** 15 U.S.C. § 1294 provides that: "Nothing contained in this chapter shall be deemed to change, determine, or otherwise affect the applicability or *nonapplicability* of the antitrust laws to any act, contract, agreement, rule, course of conduct or other activity by, between, or among persons engaging in, conducting, or participating in the organized professional team sports of football, baseball, basketball, or hockey, except the agreements to which section 1291 of this title shall apply." (Emphasis added.)

Contrary to the inference which Petitioner attempts to draw from the inclusion of baseball in this statute (Pet. Br., p. 30), the word "nonapplicability" clearly indicates that baseball's antitrust exemption has not been supplanted by the more limited telecasting exemption. This reading of the Act is supported by its legislative history. See remarks of Congressman McCulloch, 107 Cong. Rec. 20,062 (1961).

football, this time to authorize the merger of the National and American Football Leagues. 80 Stat. 1515 (1966), 15 U.S.C. § 1291. Consideration is now being given to legislation which would authorize the merger of the National Basketball Association with the American Basketball Association and hearings are in progress before the Senate Judiciary Committee.

In addition to the NBA-ABA merger proposal, Congress has under current consideration bills which, like those discussed above, would either place baseball under the antitrust laws or extend to the other professional team sports an immunity for essential sports practices, including the player reserve system. S. 2499, S. 2616, H.R. 2305, H.R. 11033 and H.R. 10825, 92nd Cong., 1st Sess. (1971).

In the context of this Court's express invitation to Congress to consider the *Toolson* exemption, this history of Congressional activity and the failure of Congress to enact legislation disturbing baseball's exemption is highly significant, as the District Court recognized. 316 F. Supp. at 279 (App. 110-11). The Wisconsin Supreme Court described this significance quite clearly:

> "[S]ilence of Congress in this context demonstrates congressional recognition that league structure and the related agreements and rules are integral parts of professional baseball as it exists, and that the application of the familiar type of antitrust legislation to the structural arrangements of organized baseball is inappropriate; . . . there is to be self regulation [of baseball] until such time as Congress decides that the public interest requires other control." *Wisconsin* v. *Milwaukee Braves, Inc.*, 31 Wis. 2d 699, 730, 144 N.W.2d 1, 17, *cert. denied*, 385 U. S. 990 (1966).

Congress remains the proper avenue for any reconsideration of baseball's regulatory status. If regulation were ever found to be desirable, that regulation should take

other forms in preference to traditional antitrust regulation. Only Congress has sufficient flexibility and legislative power to shape regulatory policy for baseball on a fair and effective basis.

(3) The Role of Collective Bargaining.

In our Statement of the Case (pp. 15-19), the history and results of the labor negotiations in baseball are set forth. That recital abundantly demonstrates the efficacy of collective bargaining in baseball. This new avenue for agreement and accommodation between clubs and players provides a cogent additional reason for this Court to adhere to the *Toolson* rule.*

Toolson recognized that Congress was preferred to the courts as an agency for change in the baseball business. Now, a demonstrably effective player collective bargaining organization offers another agency for change in areas which, like the subject of Petitioner's complaint, are fundamentally labor-management disputes.

Modification of baseball's reserve system is possible—even likely. The Commissioner of Baseball testified at trial the reserve system is an "evolving" system and that he expected "it to continue to be an evolving system". (App. 273.) But such modifications should be worked out by the parties themselves as part of the entire fabric of baseball.

* Petitioner suggests that collective bargaining is only a partial answer here because minor league players are not represented by the Players Association. But Petitioner is a major league player, Respondents are the major league clubs, and the rules complained of here are the Major League Rules. The reality of the situation is that the Players Association and the major league clubs are the parties which deal with the subject of baseball's player arrangements, and there is no indication that these parties have disregarded minor league interests in resolving their disputes. To the contrary, the interests of minor league players—as major league trainees and past and future major league players—are constantly being advanced by the Players Association.

The District Court agreed, and observed that "the conflicts . . . are not irreconcilable and that negotiations could produce an accommodation . . . equitable to all concerned—in essence, what is called for here is continuity with change." 316 F.Supp. at 282 (App. 115). Antitrust litigation cannot produce such salutary results, it can only produce harrassment and disruption. Thus *Toolson*, in shielding baseball from antitrust litigation, promotes more rational and constructive evolution of baseball's reserve system.

C. Petitioner Has Shown No Justifications Which Overcome the Weighty Considerations in Favor of Adherence to the *Toolson* Precedent.

As this Court has recently stated: "Very weighty considerations underlie the principle that courts should not lightly overrule past decisions." *Moragne* v. *States Marine Lines*, 398 U. S. 375, 403 (1970).

Petitioner sought a trial in order to demonstrate new facts about the baseball business since 1953, the year of *Toolson*, which he claimed would outweigh all such considerations. But at trial he was unable to do so.

Petitioner's main effort in this direction at trial was to point to the adoption of the free agent (or amateur) player draft in 1965 as a drastic additional restriction which allegedly weighs heavily against *Toolson*. (Pet. Br., p. 23.) That draft, to which Petitioner was never subject, permits the clubs to select negotiating rights to amateur players in reverse order of their league standing at the end of the preceding season. Such rights are valid for a six-month period,* after which an unsigned player becomes subject to

* In the other professional sports, all of which have amateur player drafts, the drafting club receives *perpetual* negotiating rights to the player. (Pl. Exs. 14, 17, 19-20.)

reselection by another club. The purpose of the draft is to enhance competitive balance by permitting the weaker clubs to have first chance at the available amateur players.*

The record indicates that this purpose has been achieved in that some clubs, especially the recent expansion clubs, have through the draft greatly improved their quality (App. 249-50; R. 1203-4). And from the standpoint of drafted players, there appear to be no serious drawbacks. The annual aggregate of bonus payments to such players upon the signing of their first professional contracts remained virtually the same after the draft rule was instituted as before, when all clubs could bid for a player's services. (Def. Kuhn Ex. C.) The District Court concluded that the draft did not "fundamentally" add to the restrictions of the reserve system and had no significance in considering the *Toolson* rule. 309 F.Supp. at 803-04 (App. 70-71).

In another direction, Petitioner now tries to denigrate baseball's reliance on *Toolson*, arguing that since Congress could place baseball under the antitrust laws at any time, *Toolson* offers "little . . . assurance." (Pet. Br., p. 24.) But Petitioner misses the point. Baseball's conceded amenability to Congressional regulation is different from—and far less disruptive than—vulnerability to antitrust litigation. This Court clearly recognized the difference in referring in *Radovich* to the "orderly" and "more accommodative" processes of Congress as opposed to the "harassment" of a "flood of litigation." 352 U.S. at 450-52.

* Commissioner Rozelle of the National Football League testified that professional football's college player draft was essential to league balance (App. 222), and Commissioner Kennedy of the National Basketball Association said that the adoption of a common college player draft was an important purpose of the proposed NBA-ABA Merger (App. 229).

Petitioner also argues that recent decisions of this Court have undermined, as supporting pillars of *stare decisis*, the importance of both reliance interests and Congressional approval by inaction. But there is nothing in this Court's decisions which indicates departure from the traditional views expressed in *Toolson*, *Shubert* and *Radovich*.

For example, in *Canada Packers, Ltd.* v. *A. T. & S. F. R. Co.*, 385 U. S. 182, 184 (1966), both Congressional approval and reliance interests were plainly recognized. This Court held that it should not "disturb" existing statutory construction when presented with a "long standing" rule, and no showing of "particularly unfortunate consequences", when Congress has not "seen fit to intervene".

In *Joint Industry Board* v. *United States*, 391 U. S. 224, 228-29 (1967) this Court noted that "in every Congress since [the prior decision] bills have been introduced to overrule or modify the result reached in that case" and held that "any new resolution . . . should come from Congress."*

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* To the same effect are *United States* v. *South Buffalo Ry. Co.*, 333 U. S. 771, 774-75, 784-85 (1948) (On questions of "statutory construction, not of constitutional import," Congress can "rectify" judicial mistakes; "Congress has considered the alleged mistake and decided not to change it."); *Walling* v. *Halliburton Co.*, 331 U. S. 17, 25 (1947) ("Knowing of the [prior] . . . decision, the Congress has permitted [the statute] . . . to stand unmodified and the courts have applied it as so construed. Employers and employees . . . have regulated their affairs on the faith of it."); *Helvering* v. *Griffiths*, 318 U. S. 371, 403 (1943) ("To rip out of the past seven years . . . a principle of law on which [the parties] . . . have acted would produce readjustments and litigation so extensive we would contemplate them with anxiety."); *Missouri* v. *Ross*, 299 U. S. 72, 75 (1936) (Congressional inaction considered "persuasive evidence of the adoption by [Congress] . . . of the judicial construction.").

The cases cited by Petitioner* are all quite distinguishable from this action in that none of them involves the combination of (1) a long standing statutory interpretation of perfect clarity in a non-constitutional area, (2) substantial reliance interests running to the very heart of a specific industry, (3) the absence of legislation despite thorough Congressional consideration, after an explicit invitation and (4) strong indications that more harm than good would come from an overruling. *Toolson*, on the other hand, derives its strength from exactly such a unique combination of factors.

Even on the limited points with which they deal, Petitioner's cases are distinguishable. In *Moragne*, this Court, in considering the possibility of Congressional acquiescence, observed that only one bill had been introduced in Congress and that no hearings had been held or scheduled. The Court noted as well that "'Congress has largely left to this Court the responsibility for fashioning the controlling rule of admiralty law.'" 398 U. S. at 405, n. 17. With respect to the *Boys Markets* decision, only two bills had been introduced and no hearings held or scheduled, and this Court could find no "persuasive circumstances evidencing a clear design." 398 U. S. at 242. In *Blonder-Tongue Laboratories*, Congressional consideration was cursory and sporadic and far from an indication of Congressional approval. In contrast, the record of Congressional consideration of baseball plainly reveals a continuous thoroughgoing inquiry into the *Toolson* ruling and quite persuasive evidence of a clear design to do nothing to reverse *Toolson*.**

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* *Blonder-Tongue Laboratories, Inc.* v. *University of Illinois Foundation*, 402 U. S. 313 (1971); *Moragne* v. *States Marine Lines, Inc.*, 398 U. S. 375 (1970); *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770*, 398 U. S. 235 (1970); and *Lear, Inc.* v. *Adkins*, 395 U. S. 653 (1969).

** Moreover, in none of these cases was there any reliance interest to be upset or any other destructive potential seen in overruling. In short, none of the underpinnings of *Toolson* was present.

On the issue of reliance, Petitioner cites *Lear, Inc.* v. *Adkins*, 395 U. S. 653 (1969). While it is true that reliance interests were asserted in that case, which overruled the common law patent licensee estoppel doctrine, this Court found that no "existing legitimate business relationships" would be undermined. 395 U. S. at 674, n. 19. In any event, the estoppel doctrine was "the product of a clouded history," as the Court noted. 395 U. S. at 671. Also, the doctrine had been substantially eroded, because patent licensees had long been able to assert patent misuse and other antitrust claims against their licensors* and the line between such antitrust claims and pure claims of patent invalidity was blurred at best.

Finally, Petitioner attempts to brush aside the strong reliance interests which have continued to grow out of this Court's baseball decisions with the vague suggestion that this Court could overrule those cases "prospectively." Petitioner does not, and cannot, indicate how any ruling altering the antitrust status on which the present baseball structure has been built could fail to have an enormous impact on the operation of baseball and the deep-rooted reliance interests involved here.

The radical and abrupt change in baseball's antitrust status sought by Petitioner—*from exemption to per se violation*—would not only expose the reserve system to violent change, and the creation of "chaotic conditions" as testified to by Petitioner's own witnesses. It would also directly threaten the very structure of the game. Almost

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* *Sola Electric Co.* v. *Jefferson Electric Co.*, 317 U. S. 173 (1942); *Edward Katzinger Co.* v. *Chicago Metallic Manufacturing Co.*, 329 U. S. 394 (1947); *MacGregor* v. *Westinghouse Electric & Manufacturing Co.*, 329 U. S. 402 (1947).

every traditional element—including vital matters not now before the Court*—would be vulnerable to costly and disruptive litigation. Petitioner may have, as he asserts, no "obligation to demonstrate how baseball should be run" if its basic practices were declared *per se* illegal as he seeks. (Pet. Br. p. 17.) But this Court has recognized that it should consider the effect of its rulings and has determined that only the "orderly" and "accommodative" processes of Congress are appropriate to effect a change in baseball's antitrust status. There is no technique of prospective overruling which can alter that conclusion.

As the District Court noted in rejecting Petitioner's argument, "we do not believe the 'prospective' overruling suggested by Petitioner would vitiate all of these underpinnings of *Toolson*" (309 F. Supp. at 805, App. 73); such relief would be "unprecedented"; and inevitably, any order overruling the long-standing precedents in this area "might still have a serious retrospective effect on the reliance interests of baseball. . . ." 316 F. Supp. at 277 (App. 106).

Petitioner's arguments, both factual and legal, fail to approach the weight of the considerations which support adherence to this Court's prior decisions.

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* Among such matters are the territorial rights of clubs and leagues, the authority of the Commissioner and the agreements and rules which bind the league and club components of baseball together in an orderly structure.

II.

Federal Labor Policy Exempts the Reserve System From the Operation of the Federal Antitrust Laws.

The controversy between the parties in this case over the player contract provisions and rules which comprise the reserve system is fundamentally a labor-management dispute.

The reserve system has been acknowledged by all parties to this action to be a mandatory subject of collective bargaining. 316 F. Supp. at 283 (App. 117). The proof at trial demonstrated that the reserve system was, at the time the complaint in this action was filed, incorporated as part of the 1968 Basic Agreement with the Major League Baseball Players Association and a principal subject involved in the negotiation of the successor agreement. (Def. Feeney Ex. F, pp. 1, 11; App. 508-09.)

The negotiations leading to the 1968 Basic Agreement had produced important concessions on the part of the clubs. Among these were numerous changes in the Uniform Player's Contract (Def. Feeney Ex. F, pp. 15-17), including a substantial increase in the minimum salary, increase in various expense allowances, establishment of a formal grievance procedure, and a modification in the renewal option clause (the clause commonly referred to as the "reserve clause") to change the maximum permitted salary cut from 25% to 20%. The Basic Agreement incorporated the Uniform Player's Contract as modified and provided that "no other form of Uniform Player's Contract will be utilized."

Paragraph 9(a) of the Uniform Player's Contract had also been changed in the negotiations. In its old version, that paragraph simply recited that the club and player agreed to accept and abide by all provisions of the Major League Rules and that disputes were to be referred to the Commissioner. As a result of the bargaining, paragraph

9(a) was amended to provide that the club and player agreed to accept and abide by all provisions of the Major League Agreement, the Major League Rules and League Rules in effect on the date of the contract, to the extent that such provisions "are not inconsistent with" the agreed upon form of Uniform Player's Contract and the Basic Agreement. (Def. Feeney Ex. F, p. 16.) Moreover, the new paragraph recited that a copy of the Major League Agreement and Rules had been delivered to the player prior to the execution of his contract. In fact, printed copies of the Major League Agreement and Rules were distributed to all of the players—at club expense—as required by the contract.

The nature of these changes in the Uniform Player's Contract makes it plain that the Players Association had dealt with the reserve system and had agreed to be bound by it and all other provisions included in the agreed upon form of Player's Contract and rules, for the term of the Basic Agreement.

In an effort to avoid the significance of such history to this action, Petitioner now says that no agreement was reached.* (Pet. Br., p. 10.) But the Players Association has repeatedly and properly asserted player rights under provisions of the Uniform Player's Contract and Major League Rules; and a number of grievances have

* Petitioner also asserts that there was a finding that the reserve system "is not presently collectively agreed to." (Pet. Br., p. 9.) But the District Court's statement on this point (309 F. Supp. at 806 n. 51; App. 75), that the Petitioner was "probably correct" that no agreement was in effect, was made *before* trial in the context of considering Petitioner's injunction motion, without benefit of the uncontradicted evidence discussed above, and does not constitute any sort of "finding." The District Court did not rule on this issue after trial because of its disposition of this action under *Toolson*.

been brought to arbitration by the Association under the Basic Agreement grievance procedure seeking to vindicate those rights and to obtain favorable interpretations of various contract clauses and rules. Petitioner's argument that the contract clauses and rules which make up the reserve system *are not* collectively agreed to, while all contract clauses and rules which provide player safeguards *are* collectively agreed to—even though both were incorporated without distinction in the same Basic Agreement—is a totally illogical and insupportable view of contract interpretation and the realities of a collective bargaining accord. The first Basic Agreement expressly recognized that the Players Association had compromised its differences with the clubs on all subjects and had agreed that bargaining was at an end for the term of the agreement. (Def. Feeney Ex. F, pp. 1, 5.) Both halves of that bargain—not just the Association half—were encompassed by the Basic Agreement.

As the term of the first Basic Agreement neared its end, the subject of the reserve system was on the parties' bargaining agenda. But before negotiations on the successor agreement moved beyond the preliminary stage, and before the Basic Agreement was terminated, this action had been commenced.

The record reveals that the Players Association has directed and financially supported this litigation from the outset in an obvious effort to add leverage to its collective bargaining position. But federal labor policy precludes such a perversion of the antitrust laws. Congress has consistently stated that the goal of federal labor policy is the settlement of employer-employee disputes through the process of collective bargaining* and this Court has recognized that the policy of the federal labor statutes is to promote "the peaceful settlement of industrial disputes by subjecting labor-management controversies to

* Norris-LaGuardia Act, 47 Stat. 70 (1932), 29 U.S.C. § 102; National Labor Relations Act, 49 Stat. 449 (1935), 29 U.S.C. § 151; Labor-Management Relations Act, 61 Stat. 136 (1947), 29 U.S.C. § 141.

the mediatory influence of negotiation." *Fibreboard Paper Products Corp.* v. *NLRB,* 379 U. S. 203, 211 (1964).

Moreover, this Court has specifically recognized that Congressional labor policy precludes judicial intervention in collective bargaining under the guise of antitrust enforcement. In *Teamsters Union* v. *Oliver,* 358 U. S. 283 (1959), the Court, holding that a state antitrust law could not be applied to prevent the contracting parties from carrying out their agreement upon a mandatory subject of bargaining, stated:

> "Within the area in which collective bargaining was required, Congress was not concerned with the substantive terms upon which the parties agreed. . . . The purposes of the [federal labor] Acts are served by bringing the parties together and establishing conditions under which they are to work out their agreement themselves." 358 U. S. at 295. (Citations omitted.)

The same rationale was held applicable in *Amalgamated Meat Cutters* v. *Jewel Tea Co.,* 381 U. S. 676 (1965), with respect to the relationship of the federal antitrust laws to the federal labor acts. There the union and a multi-employer bargaining unit of food retail merchants entered into a collective bargaining agreement including a prohibition against the sale of fresh meat after 6:00 P.M. The Jewel Tea Company, which sold a substantial amount of pre-packaged meat, objected to signing the agreement because, while it had the salutary purpose of shortening the working hours of meat cutters, it also prevented the evening sale of meats pre-packaged by butchers during the day. Under threat of a strike Jewel Tea was forced to sign the agreement, but it then brought a Sherman Act action against not only the union but also the multi-employer group.

The Court held that the agreement was exempt from the Sherman Act, the majority splitting 3-3 as to the reasons for the decision. But under either of the two rationales expressed in that case, the reserve system is squarely within the antitrust exemption covering labor relations matters.

The opinion of Mr. Justice Goldberg, in which Justices Harlan and Stewart joined, stated a clear and easily applied rule that "collective bargaining activity concerning mandatory subjects of bargaining under the Labor Act is not subject to the antitrust laws." 381 U. S. at 710. The opinion further stated:

> "To hold that mandatory collective bargaining is completely protected would effectuate the congressional policies of encouraging free collective bargaining, subject only to specific restrictions contained in the labor laws, and of limiting judicial intervention in labor matters via the antitrust route—an intervention which necessarily under the Sherman Act places on judges and juries the determination of 'what public policy in regard to the industrial struggle demands'." 381 U. S. at 710. (Citations omitted.)

The opinion emphasized that the history of the development of federal labor policy:

> ". . . makes clear that Congress intended to foreclose judges and juries from roaming at large in the area of collective bargaining, under cover of the antitrust laws, by inquiry into the purpose and motive of the employer and union bargaining on mandatory subjects. Such roaming at large, experience shows, leads to a substitution of judicial for congressional judgment as to how collective bargaining should operate." 381 U. S. at 716.

Under this opinion the reserve system, as a mandatory subject, is outside the reach of the Sherman Act.*

A somewhat different approach was taken in the opinion in *Jewel Tea* of Mr. Justice White, in which Chief Justice Warren and Mr. Justice Brennan joined. This opinion would not automatically prevent the application of the antitrust laws simply because the subject matter in dispute is a mandatory subject of collective bargaining. It calls instead for a comparative analysis of the impact of the policies of both the federal antitrust and labor laws. In *Jewel Tea,* there was a plain anticompetitive effect on the plaintiff, an employer member of the multi-employer bargaining unit, because it was not permitted to market prepackaged meats except during the hours when its fellow employer competitors engaged butchers. There was also an adverse effect on members of the public because they were precluded from purchasing prepackaged meats during evening store hours. But the policy of the labor laws was nevertheless found to be of greater weight, and an important element in this determination was the fact that a mandatory subject was involved. 381 U. S. at 689-91.

On the other hand, in *United Mine Workers* v. *Pennington,* 381 U. S. 657 (1965), a companion case to *Jewel Tea,* antitrust policy was found (over the dissent of Justices Goldberg, Harlan and Stewart) to outweigh labor policy. In that case, a coal mining company had agreed with a union to increase wage levels; and the union agreed to impose those wage levels on the company's smaller competitors, regardless of their ability to pay, in order to eliminate the smaller companies. The union's interest in

* Petitioner's brief (p. 41) argues that this opinion does not exempt "hard-core 'anticompetitive commercial restraint' ", suggesting that such restraints are present here. But the pages cited by Petitioner (381 U. S. at 732-33) refer explicitly to "nonmandatory subjects of bargaining" as distinguished from mandatory subjects such as the reserve system.

the mandatory subject of wages was plain, but the wage arrangement was found to be primarily a conspiracy to curtail competition outside the bargaining area and thus an antitrust violation.

In this case, as in *Jewel Tea,* the labor aspects predominate and labor policy should control. The issue here is purely between employers and employees, it is a mandatory subject, it has been dealt with in a collective bargaining agreement,* and it has been the subject of continued negotiations. The Players Association may not embrace the present system entirely, but it has bargained about it, reached accord and lived under it, benefited from the stability which it has engendered, and even now seeks only its modification—not its destruction. (App. 188-90.)

On the other hand, the only effect of the reserve system on competition is that it prevents the baseball clubs from freely acquiring each other's employees. Unlike the situations in *United Mine Workers* v. *Pennington,* 381 U. S. 657 (1965) and *United States* v. *Women's Sportswear Mfrs. Ass'n,* 336 U. S. 460 (1949), which are relied upon by Petitioner, the effects here are on participants in the bargaining (as in *Jewel Tea),* and not on competitors of the employer who are strangers to the bargaining. There is absolutely no antitrust issue here between economic competitors outside of the bargaining area. In such circumstances, labor policy should prevail over antitrust policy.

* Even if the reserve system were not part of a collective bargaining agreement it would make no difference. Unilaterally adopted work rules are exempt from the antitrust laws as long as the standards of *Jewel Tea* are otherwise met. *Carroll* v. *American Federation of Musicians,* 372 F. 2d 155, 165 (2d Cir. 1967), *aff'd in part and rev'd in part on other grounds,* 391 U.S. 99 (1968). The test is concerned with the subject matter at issue, not whether bargaining has culminated in agreement.

Petitioner, in his brief (pp. 40-42), dismisses the importance of *Jewel Tea* for the reason that Respondents are not a labor organization, and thus presumably the "labor exemption" cannot be applicable. This ignores the fact that the labor exemption as an expression of the policy of the federal labor acts is intended to protect the *"practice and procedure"* of collective bargaining. National Labor Relations Act, Sec. 1, 49 Stat. 449 (1935), 29 U.S.C. § 151. This goal can be accomplished only by exempting from antitrust attack the *subjects* of collective bargaining, not merely one of the parties. See *Clune* v. *Publishers' Ass'n of New York City,* 214 F. Supp. 520, 528-29 (S.D.N.Y. 1963), *aff'd,* 314 F.2d 343 (2d Cir. 1963). Petitioner's one-sided view of the labor relations antitrust exemption, leaving one party vulnerable and the other exempt, would plainly have a chilling effect on collective bargaining in general; and in particular on the process of bargaining in baseball about modifications to the reserve system.

It should not be overlooked that the issue of the reserve system—the sole issue in this case—has been dealt with by the parties at the bargaining table in the much wider context of the whole gamut of issues which have confronted them. In this context, concessions on one issue are made in exchange for concessions by the other party elsewhere. New concepts can be adopted on a temporary or limited basis to test their viability. Ultimately, matters are resolved by the parties who must live and work on a daily basis with the results of their arrangements. It is considerations of this sort which underscore the wisdom of federal labor policy and demonstrate why this is an appropriate case for application of that policy in preference to the policy of the antitrust laws.

III.

Baseball's Reserve System Is Not Subject to State Antitrust Regulation.

Neither the District Court nor the Court of Appeals found any merit in Petitioner's state law claims. Those claims had been fully litigated as recently as 1966 when the Wisconsin Supreme Court ruled that the interstate business of baseball could not be regulated by state antitrust law, because such regulation was foreclosed by the Supremacy and Commerce Clauses of the United States Constitution. *Wisconsin* v. *Milwaukee Braves, Inc.*, 31 Wis. 2d 699, 144 N.W. 2d 1, *cert. denied*, 385 U. S. 990 (1966).

As the District Court observed in agreeing with the Wisconsin decision:

> "Certain of the majority [of the Wisconsin Supreme Court] were of the opinion that state regulation was preempted because it would interfere with a Congressional policy permitting self-regulation for baseball which they saw as implicit from the silence of Congress in this particular context. Others in the majority preferred the view that the national character of organized baseball and the necessary inter-dependence of the teams requires uniformity of regulation and that 'since organized baseball operates widely in interstate commerce, the regulation, if there is to be any, must be prescribed by Congress'." 309 F. Supp. at 807 (App. 77).

The dual rationale of the *Wisconsin* case is fully applicable and controlling here.

It is a long-recognized imperative of the Commerce Clause of the federal Constitution that state and local laws

may not unreasonably and unduly burden interstate commerce. Petitioner argues that state antitrust regulation would not be burdensome. But the District Court, after considering the nature of the baseball industry and the provisions of the various state laws Petitioner attached to his post-trial brief, found otherwise:

> "We do not believe that the operation of baseball and its reserve system is a matter which admits of diversity of treatment. State and local laws may not unduly burden interstate commerce.
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> • • •
>
> "As we see it, application of various and diverse state laws here would seriously interfere with league play and the operation of organized baseball." 316 F. Supp. at 280 (App. 111).

The Court of Appeals agreed, and rejected Petitioner's suggestion that the burden could be avoided by compliance with the strictest state standard:

> "Professional baseball clubs, although existing as separate legal entities, are organized into so-called leagues for competitive play and are dependent on the league playing schedule to further the ends of their sports competition. Therefore, it is the league structure at which any state antitrust regulation must be aimed if organized professional baseball is not to be severely fragmented. On the one hand, it is apparent that each league extends over many states, and that, if state regulation were permissible, the internal structure of the leagues would require compliance with the strictest state antitrust standard. The consequent extra-territorial effect of necessary compliance would be considerably more farreaching than that in *Southern Pacific Co.* v. *Arizona, supra.* On the other hand, we do not find that a state's inter-

> est in antitrust regulation, when compared with its interest in health and safety regulation, is of particular urgency. Hence, as the burden on interstate commerce outweighs the states' interests in regulating baseball's reserve system, the Commerce clause precludes the application here of state antitrust law." 443 F.2d at 267-68 (App. 130-31). (Footnote omitted.)

This ruling is entirely consistent with the principles developed in *Southern Pacific Co.* v. *Arizona*, 325 U. S. 761 (1945), in which this Court held that:

> "[T]he states have not been deemed to have authority to impede substantially the free flow of commerce from state to state, or to regulate those phases of the national commerce which, because of the need of national uniformity, demand that their regulation, if any, be prescribed by a single authority." 325 U. S. at 767.

There can be no doubt that uniformity of regulation is required insofar as baseball is concerned. To permit application of the various state laws, as Petitioner seeks, would "seriously interfere" with the operation of baseball, because nonuniform regulation would make league play impracticable.* 316 F. Supp. at 280 (App. 111).

In fact, there has never been any state antitrust regulation of baseball. Only the State of Wisconsin has attempted local regulation, and that attempt spawned nothing but conflict and disruption. The Wisconsin trial court ordered the Braves baseball club to return to Milwaukee from Atlanta where it had relocated, the federal district court in Houston enjoined the enforcement of the order of the Wisconsin

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* The NLRB, in asserting jurisdiction over baseball, noted that: "[I]t is apparent that the Employer [baseball], whose operations are so clearly national in scope, ought not to have its labor relations problems subject to diverse state labor laws." *American League and Ass'n of Umpires*, 180 NLRB 190, 192 (1969). (Footnote omitted.)

court, and a Georgia state court ordered the same club to remain in Atlanta. *City of Atlanta and Fulton County Recreation Authority* v. *Atlanta Braves, Inc.*, Case No. B-17638, Atlanta, Ga., Sup. Ct. (Feb. 8, 1966). The Wisconsin trial court (or a board or commission to be created by it) was also prepared to preside over the creation of a new major league club and to determine the players to be assigned to that new club from other clubs, and the consideration to be paid for them, as well as other details of the entry of the new club into the baseball structure. *Wisconsin* v. *Milwaukee Braves, Inc.*, 1966 CCH Trade Cas. ¶ 71,738 at pp. 82,411-12 (Wisc. Cir. Ct., Civil Div., Mil. Cty., 1966). The power of state courts in this area, once unleashed, could be disastrous.*

The Wisconsin attempt at regulation, properly foreclosed by the Supreme Court of that state, indicates the kind of state conflict which is quite probable** and illustrates the

* Petitioner asserts in his brief (Pet. Br., p. 35) that the Court of Appeals below held that state antitrust regulation would not involve any conflicts. On this point, he plainly misreads that court's opinion. 443 F. 2d. at 267 (App. 129-30). Moreover, Petitioner has himself (in his brief to the Court of Appeals) indicated conflict by stating that the rule of reason would apply to the reserve system in several states while in others there would be a *per se* violation. If Petitioner were right, a finding of reasonableness under the laws of the rule-of-reason states would be in total and irreconcilable conflict with those of the *per se* states. It should also be noted that the antitrust laws of Texas, Missouri and Massachusetts appear to be inapplicable to the activities of baseball, either because they do not apply to service businesses or because they are inapplicable to interstate commerce, and the Wisconsin Supreme Court has specifically barred the application of Wisconsin antitrust law to baseball.

** Petitioner contends that under present law *actual* conflict of regulation must be shown to invalidate state regulation under the Commerce Clause. (Pet. Br., p. 35.) But Petitioner is demonstrably wrong in this contention. The authorities all agree that the *logical possibility* or *probability* of diverse or conflicting regulation must be considered in determining whether the Commerce Clause is a bar to state regulation. *E.g., Colorado Anti-Discrimination Comm'n* v. *Continental Airlines*, 372 U. S. 714, 721 (1963); *Cali-*

wisdom of the District Court's determination that the application of diverse state laws would "seriously interfere with . . . the operation of organized baseball." 316 F. Supp. at 280 (App. 111).

The other rationale of the *Wisconsin* decision provides a separate controlling reason for the denial of state regulatory power. That rationale is not, as Petitioner continues to assert, that the Sherman Act has pre-empted state antitrust law. Rather, the rationale is that the policy of the federal government has been consistently to exempt baseball from the operation of all antitrust laws. Therefore, Petitioner seeks to contradict federal policy when he seeks state regulation of baseball.

As the court in the *Wisconsin* case observed, in coming to the conclusion that federal policy precluded state regulation:

> "Some members of this Court, including the writer of this opinion, conclude that the silence of Congress in this context sufficiently implies such policy, and that application and enforcement of a state antitrust law to decisions of the league as to the location of franchises and membership in the league would conflict with the national policy in this segment of interstate commerce." 31 Wis. 2d at 730, 144 N. W. 2d at 17.

The District Court echoed this analysis, indicating that it was necessary to do so in order to give effect to the rationale of *Toolson*:

> "We believe it unlikely that the Supreme Court would have held, as it did, that baseball's reliance interests precluded overruling *Federal Baseball* and that 'Congress had no intention of including the business of baseball within the scope of federal antitrust

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fornia v. *Zook*, 336 U. S. 725, 735 (1949); *Head* v. *New Mexico Board*, 374 U. S. 424, 429 (1963). In any event, actual conflict arose in the *Wisconsin* case, and such conflict would be repeated if the *Wisconsin* rule were abandoned.

> laws,' if it considered baseball vulnerable to state regulation. Enforcement of such state laws would appear to produce a result inconsistent with the objective of the federal antitrust laws interpreted by the Supreme Court as excluding the business of baseball.", 316 F.Supp. at 279 (App. 109).

Nevertheless, Petitioner continues to argue that this Court in *Toolson* was inviting state regulation. Point I of this brief is a complete answer to that argument. Petitioner simply refuses to accept the fact that *Toolson, Shubert* and *Radovich* referred baseball's status exclusively to the more accomodative processes of Congress.

The reserve system has been recognized by Congress to represent the very fabric of the interstate business of baseball. To expose that reserve system to attack under state law would be to run directly contrary to the national policy which is so evident in the history of Congressional consideration of baseball.

In an effort to undermine the decisions of the courts below, Petitioner complains that neither the District Court nor the Court of Appeals made a particularized inquiry into state law. But Petitioner never gave either court assistance, for he failed to assert at any time which state's laws should apply and why; he merely generalized about state law in the abstract as counterpoint to his federal antitrust arguments. Despite this, both courts had before them a complete record of the baseball industry and the texts of numerous state antitrust laws. After considering the impact these laws would have on the industry before them, both courts concluded that state antitrust regulation was impermissible.

Finally, Petitioner attempts to avoid the dual rationale of the *Wisconsin* case and the opinions of both courts

below, by comparing baseball's intricate web of leagues, schedules, rules and regulations to the operations of a "door-to-door seller" and by implying that if baseball is exempt from the state antitrust laws then the self-interest of the peddler might also enable him to avoid state regulation. (Pet. Br., p. 37.) But this ignores the basis for, and the clear language of, this Court's opinion in *Southern Pacific* where the Court held that state regulation is permissible so long as it "is local in character and effect, and its impact on the national commerce does not seriously interfere with its operation : . .", but not if "the need of national uniformity" requires that "regulation, if any, be prescribed by a single authority." 325 U. S. at 767.

Baseball has demonstrated its obvious need for uniform nationwide regulation and has shown that serious interference would result from fragmentary and conflicting state regulation. Recognition of this by the courts below, and their faithful application of the principles of *Southern Pacific,* can have no adverse impact on valid state regulatory measures, in the field of antitrust law or otherwise.

CONCLUSION

For the reasons stated, the decision of the court below should be affirmed.

Respectfully submitted,

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ADDENDUM A

United States Constitution, Article I, Section 8

The Congress shall have Power

* * * * *

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

United States Constitution, Article VI, clause 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

ADDENDUM B

Set forth below are those portions of the Uniform Player's Contract, Regulations included as a part thereof, and Major League Rules which constitute baseball's reserve system:

Uniform Player's Contract (Plaintiff's Ex. 3*):

The renewal option

"10. (a) On or before January 15 (or if a Sunday, then the next preceding business day) of the year next following the last playing season covered by this contract, the Club may tender to the Player a contract for the term of that year by mailing the same to the Player at his address following his signature hereto, or if none be given, then at his last address of record with the Club. If prior to the March 1 next succeeding said January 15, the Player and the Club have not agreed upon the terms of such contract, then on or before 10 days after said March 1, the Club shall have the right by written notice to the Player at said address to renew this contract for the period of one year on the same terms, except that the amount payable to the Player shall be such as the Club shall fix in said notice; provided, however, that said amount, if fixed by a Major League Club, shall be an amount payable at a rate not less than 80% of the rate stipulated for the preceding year.**

(b) The Club's right to renew this contract, as provided in sub-paragraph (a) of this paragraph 10, and

* The Uniform Player's Contract entered in evidence as Pl. Ex. 3 was substantially modified by the 1970 baseball collective bargaining agreement. (Def. Feeney Ex. N, App. 418-47.) Footnote references will therefore be made to indicate significant modifications.

** The maximum salary cut permissible under this paragraph has been reduced. A player's salary may be cut only 20% in any one year and 30% in any two consecutive years. (Def. Feeney Ex. N, App. 422.)

the promise of the Player not to play otherwise than with the Club have been taken into consideration in determining the amount payable under paragraph 2 hereof."

Minimum salary requirements

"2. Notwithstanding the rate of payment stipulated above, the minimum rate of payment to the Player for each day of service on a Major League Club shall be at the rate of $10,000 per year; except, if a Player physically joins a Major League Club on or after September 1, he shall be paid during September at the rate of $8,500 per year for each day of service until he has accumulated a total of 60 days of Major League service, after which he shall be paid at the rate of $10,000 per year for each day of service with such Major League Club.*

Payment to the Player at the rate stipulated above shall be continued throughout any period in which a Player is required to attend a regularly scheduled military encampment of the Reserve of the Armed Forces or of the National Guard during the Club's playing season."

Requirement that player may play for only one club

"5. (a) The Player agrees that, while under contract, and prior to expiration of the Club's right to renew this contract, he will not play baseball otherwise than for the Club, except that the Player may participate in post-season games under the conditions prescribed in the Major League Rules. Major League Rule 18(b) is set forth on page 4 hereof."

Participation in other sports prohibited

"5. (b) The Player and the Club recognize and agree that the Player's participation in other sports

*The minimum salary has been increased as follows: for the 1970 season, $12,000, for the 1971 season, $12,750 and for the 1972 season, $13,500. (Def. Feeney Ex. N, App. 419.)

may impair or destroy his ability and skill as a baseball player. Accordingly the Player agrees that he will not engage in professional boxing or wrestling; and that, except with the written consent of the Club, he will not engage in any game or exhibition of football, basketball, hockey or other athletic sport."*

Assignment of player contract

"6. (a) The player agrees that this contract may be assigned by the Club (and reassigned by any assignee Club) to any other Club in accordance with the Major League Rules and the Professional Baseball Rules.

(b) The amount stated in paragraph 2 hereof which is payable to the Player for the period stated in paragraph 1 hereof shall not be diminished by any such assignment, except for failure to report as provided in the next sub-paragraph (c).

(c) The Player shall report to the assignee Club promptly (as provided in the Regulations) upon receipt of written notice from the Club of the assignment of this contract. If the Player fails so to report, he shall not be entitled to any payment for the period from the date he receives written notice of assignment until he reports to the assignee Club."

Termination of player contract

"7. (b) The Club may terminate this contract upon written notice to the Player (but only after requesting and obtaining waivers of this contract from all other Major League Clubs) if the Player shall at any time:

(1) fail, refuse or neglect to conform his personal conduct to the standards of good citizenship and good sportsmanship or to keep himself in first-class

* This provision has been modified to prohibit only sports "involving a substantial risk of personal injury." (Def. Feeney Ex. N, App. 423.)

physical condition or to obey the Club's training rules; or

(2) fail, in the opinion of the Club's management, to exhibit sufficient skill or competitive ability to qualify or continue as a member of the Club's team; or

(3) fail, refuse or neglect to render his services hereunder or in any other manner materially breach this contract.

(c) If this contract is terminated by the Club by reason of the Player's failure to render his services hereunder due to disability resulting directly from injury sustained in the course and within the scope of his employment hereunder and written notice of such injury is given by the Player as provided in the Regulations on page 4 hereof, the Player shall be entitled to receive his full salary for the season in which the injury was sustained, less all workmen's compensation payments paid or payable by reason of said injury.

(d) If this contract is terminated by the Club during the training season, payment by the Club of the Player's board, lodging, and expense allowance during the training season to the date of termination and of the reasonable traveling expenses of the Player, including first-class jet air fare and meals en route to his home city, and the expert training and coaching provided by the Club to the Player during the training season shall be full payment to the Player.*

(e) If this contract is terminated by the Club during the playing season, then, except in the case provided for in sub-paragraph (c) of this paragraph 7, the Player shall be entitled to receive as full payment hereunder such portion of the amount stipu-

* The Club must now pay 30 days termination pay to a player terminated under subparagraph (b)(2) during the spring training season. (App. 498.)

lated in paragraph 2 hereof as the number of days of his actual employment in the Club's playing season bears to the total number of days in said season, provided, however, that if this contract is terminated under sub-paragraph (b)(2) of this paragraph 7 for failure to exhibit sufficient skill or competitive ability, the Player shall be entitled to an additional amount equal to thirty (30) days payment at the rate stipulated in paragraph 2 hereof and the reasonable traveling expenses of the Player including first-class jet air fare and meals en route to his home city.*

(f) If the Club proposes to terminate this contract in accordance with sub-paragraph (b) of this paragraph 7, the procedure shall be as follows:

(1) The Club shall request waivers from all other Major League Clubs. Such waiver request must state that it is for the purpose of terminating this contract and it may not be withdrawn.

(2) Upon receipt of the waiver request, any other Major League Club may claim assignment of this contract at a waiver price of $1.00, the priority of claims to be determined in accordance with the Major League Rules.

(3) If this contract is so claimed, the Club shall, promptly and before any assignment, notify the Player that it had requested waivers for the purpose of terminating this contract and that the contract had been claimed.

(4) Within 5 days after receipt of notice of such claim, the Player shall be entitled, by written notice to the Club, to terminate this contract on the date of his notice of termination. If the Player fails so to notify the Club, this contract shall be assigned to the claiming Club.

* The termination pay provided in subsection 7(e) has been increased from 30 days to 60 days for the 1970 season and, with respect to any terminations occurring on or after May 15 in the 1972 season and thereafter, the player shall be entitled to the full balance of salary payments due under his contract to the end of the season. (Def. Feeney Ex. N, App. 421; App. 498.)

(5) If the contract is not claimed, the Club shall promptly deliver written notice of termination to the Player at the expiration of the waiver period."

Incorporation of Major League Rules

"9. (a) The Club and the Player agree to accept, abide by and comply with all provisions of the Major League Agreement, the Major League Rules, the Rules or Regulations of the League of which the Club is a member, and the Professional Baseball Rules, in effect on the date of this Uniform Player's Contract, which are not inconsistent with the provisions of this contract or the provisions of any agreement between the Major League Clubs and the Major League Baseball Players Association, provided that the Club, together with the other Clubs of the American and National Leagues and the National Association, reserves the right to modify, supplement or repeal any provision of said Agreement, Rules and/or Regulations in a manner not inconsistent with this contract or the provisions of any then existing agreement between the twenty Clubs and the Major League Baseball Players Association. A copy of the Major League Agreement, the Major League Rules, the Rules or Regulations of the League of which the Club is a member, and the Professional Baseball Rules, as in effect on the date of this Contract has been delivered to the Player prior to execution of this Contract."

Regulation 5: Discipline

"For violation by the Player of any regulation or other provision of this contract, the Club may impose a reasonable fine and deduct the amount thereof from the Player's salary or may suspend the Player without salary for a period not exceeding thirty days, or both. Written notice of the fine or

suspension or both and the reasons therefore shall in every case be given to the Player."*

Regulation 7: Reporting on assignment

"In case of assignment of this contract the Player shall report promptly to the assignee club within 72 hours from the date he receives written notice from the Club of such assignment, if the Player is then not more than 1600 miles by most direct available railroad route from the assignee Club, plus an additional 24 hours for each additional 800 miles."

Major League Rules (Plaintiff's Ex. 6):

The no tampering rule—Rule 3(g)

"TAMPERING. To preserve discipline and competition, and to prevent the enticement of players, coaches, managers and umpires, there shall be no negotiations or dealings respecting employment, either present or prospective, between any player, coach or manager and any club other than the club with which he is under contract or acceptance of terms, or by which he is reserved, or which has the player on its Negotiation List, or between any umpire and any league other than the league with which he is under contract or acceptance of terms, unless the club or league with which he is connected shall have, in writing, expressly authorized such negotiations or dealings prior to their commencement."

The reserve lists—Rule 4-A(a)

"On or before November 15 in each year, each Major League Club shall transmit to the Commissioner and to its League President a list of not exceeding forty

* Such discipline may now be submitted by the player to arbitration before a third-party arbitrator in accordance with the terms of the grievance procedure contained in the 1970 collective bargaining agreement. (Def. Feeney Ex. N, App. 422, 429-44.)

(40) active and eligible players, whom the club desires to reserve for the ensuing season; and also a list of all its players who have been promulgated as placed on the Military, Voluntarily Retired, Restricted, Disqualified, Suspended or Ineligible Lists; and players signed under Rule 4 who do not count in the club's under control limit. On or before November 30 the League President shall transmit all of said lists to the Secretary-Treasurer of the Executive Council, who shall thereupon promulgate same, and thereafter no player on any list shall be eligible to play for or negotiate with any other club until his contract has been assigned or he has been released."

The assignment rule—Rule 9

"A club may assign to another club an existing contract with a player. The player, upon receipt of written notice of such assignment, is by his contract bound to serve the assignee.

The date of assignment shall be deemed to be the date upon which notice of assignment is delivered to the player.

After the date of such assignment all rights and obligations of the assignor clubs thereunder shall become the rights and obligations of the assignee club except as otherwise provided in Rule 4 and the assignee club shall be liable to the player for payments accruing from the date of assignment and shall not be liable (but the assignor club shall remain liable) for payments accrued prior to and including that date."

The rule requiring player contracts to be uniform —Rule 3(a)

"UNIFORM CONTRACT. To preserve morale and to produce the similarity of conditions necessary to keen competition, the contracts between all clubs and their players in the Major Leagues shall be in a single form which shall be prescribed by the Major

League Executive Council. No club shall make a contract different from the uniform contract or a contract containing a non-reserve clause, except with the written approval of the Commissioner. All contracts shall be in duplicate and the player shall retain a counterpart original. The making of any agreement between a club and a player not embodied in the contract shall subject both parties to discipline; and no such agreement, whether written or verbal, shall be recognized or enforced."